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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1937

No. 13

UNITED GAS PUBLIC SERVICE COMPANY,
APPELLANT,

vs.

STATE OF TEXAS, MRS. MIRIAM A. FERGUSON,
FORMER GOVERNOR OF TEXAS, ET AL.

APPEAL FROM THE COURT OF CIVIL APPEALS FOR THE THIRD SUPREME JUDICIAL DISTRICT OF THE STATE OF TEXAS

FILED MARCH 13, 1937.

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VOL. I

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[fol. 1] [Caption omitted]

[fol. 2]

IN 53RD JUDICIAL DISTRICT COURT OF TRAVIS COUNTY, TEXAS

No. 52774

THE STATE OF TEXAS et al.

vs.

UNITED GAS PUBLIC SERVICE COMPANY

PLAINTIFFS' ORIGINAL PETITION—Filed July 26, 1933

To Said Honorable Court:

Come now the State of Texas and Lon A. Smith, C. V. Terrell and Ernest O. Thompson, in their official capacity as members of and composing the Railroad Commission of Texas, Miriam A. Ferguson, in her official capacity as Governor of Texas, James V. Allred in his official capacity as Attorney General of Texas, the City of Laredo, a municipal corporation duly incorporated as such under the laws of the State of Texas and having its domicile in Webb County in said State, and Albert Martin, in his official capacity as Mayor of the City of Laredo, and Louis Franklin, W. S. Cantrell, E. S. Russell, T. Leyendecker, H. Cluck, J. Henry and B. Salinas, in their official capacity as members of and constituting and composing the City Council and governing body of the City of Laredo, and M. J. Raymond, in his official capacity as City Attorney of the City of Laredo, hereinafter called plaintiffs, complaining of United Gas Public Service Company, a corporation duly [fol. 3] incorporated under the laws of the State of Delaware and doing business in this State by virtue of a permit from the State of Texas and having its principal office in Harris County, Texas, and whose agent for service is J. A. Elkins of Houston, Harris County, Texas, upon whom service may be had, hereinafter called defendant.

I

Defendant is successor in title to Texas Border Gas Company and South Texas Gas Company. Defendant and its predecessors in title have owned and operated and defend-

ant now owns and operates a gas distribution system and distributes and sells natural gas and natural gas service within the limits of the City of Laredo and to the inhabitants thereof.

II

The City of Laredo is a city having a population in excess of twenty-five (25,000) thousand people and therefore has the power, under the laws of this State, by ordinance, to regulate the rates and compensation to be charged by defendant for furnishing natural gas and natural gas service to the inhabitants of said city.

[fol. 4]

III

On or about the 15th day of December, 1931, the City Council of the City of Laredo adopted an ordinance fixing and prescribing rates to be charged to the inhabitants of the City of Laredo for natural gas and natural gas service, a copy of which said ordinance is hereto attached, marked Exhibit "A", and made a part hereof and which, by its terms, was to become effective January 1, 1932. Thereafter, and before its effective date, said ordinance was superseded by an order of the Railroad Commission of Texas upon the filing with said Commission by the defendant of Gas Utilities Docket No. 49.

IV

In this connection it is shown the court that prior to the effective date of the aforesaid ordinance one of defendant's predecessors in title, Texas Border Gas Company, applied to the City Council of the City of Laredo for an increase in rates of natural gas being so supplied domestic consumers. Because the City failed to grant said application for said increase in said rates an appeal was taken to the [fol. 5] Railroad Commission of Texas in Gas Utilities Docket No. 63.

V

Gas Utilities Docket No. 49 and Gas Utilities Docket No. 63 were consolidated and heard together by the Railroad Commission on June 13, 1933. The Railroad Commission of Texas, out of said dockets, issued its order and opinion fixing and prescribing the rates and compensation to be charged by the defendant to domestic consumers of natural

gas within the City of Laredo from and after the first day of January, 1932 and ordering certain refunds paid to the City of Laredo for the benefit of domestic consumers within its boundaries which had been collected since January 1, 1932, a copy of which said order and opinion is hereto attached, marked Exhibit "B" and made a part hereof.

VI

The said order of the Commission marked Exhibit "B" prescribes a domestic rate within the City of Laredo of fifty-five (55¢) cents net per thousand cubic feet of natural gas with ten per cent penalty for non-payment of bills within ten days, and a minimum charge of $1.00 per month, [fol. 6] and is made retroactive to January 1, 1932. The rates so fixed by said order are just and reasonable.

VII

It is shown the court that since the year 1921, and at this time, the prevailing rate charged and collected by defendant and its predecessors in title within the City of Laredo for natural gas and natural gas service for domestic consumers has been and is now at the rate of seventy-five (75¢) cents per one thousand cubic feet of natural gas with ten per cent discount for prompt payment of bills, and a minimum charge of $1.00 per month, and that said rate now so charged is greatly in excess of the rate prescribed in the Commission's aforesaid order and is, therefore, illegal and in violation of said order and the laws of this State.

It is further shown that defendant has been violating said order since the same was entered by the Railroad Commission and is violating the same at this time and unless enjoined and restrained will continue to violate its terms and provisions.

VIII

In this connection plaintiffs show the court that the laws [fol. 7] of this State prescribe an orderly and valid procedure for the fixation and establishment of adequate and reasonable rates and charges for the distribution and sale of natural gas and natural gas service by gas utilities such as defendant; that Article 6058, Revised Civil Statutes, gives any gas utility the right to appeal from the order of a city government reducing any existing rate, to the Rail-

road Commission of Texas; that Article 6059, Revised Civil Statutes, gives any dissatisfied gas utility the right of appeal from an order of the Commission to any district court of competent jurisdiction in Travis County, and that such an action is given precedence over all other causes on said docket of a different nature and is required to be tried in said court as other civil causes; moreover, said article provides that gas utilities shall have the right of appeal to the appellate courts of this State, and such causes are given precedence in the appellate courts over all others of a different nature; such utilities are further given the right to supersede all such orders pending a final determination of same in the courts of this State; and by the terms of Article 6062 it is specifically provided that the enforcement of [fol. 8] any such order of the Commission may be stayed by such court by any affected gas utility pending a final determination of the appeal, and that any such utility shall not, during said time, be subject to the penalties prescribed by law for a failure to observe such order.

IX

It is further shown that notwithstanding defendant's remedies are adequate and complete in the courts of this State, and notwithstanding every constitutional and legal right to which it may be entitled is and will be fully safeguarded and protected in said court, the defendant, nevertheless, elected to and did, on or about the 29th day of June, 1933, file its bill of complaint in the District Court of the United States for the Southern District of Texas, Laredo Division, in a cause entitled, United Gas Public Service Company, plaintiff, v. Lon A. Smith, et al., defendants, No. 32 in Equity, and being a cause wherein your defendant is plaintiff and wherein each and all of your plaintiffs are defendants, except the State of Texas. Plaintiffs allege, however, in this connection that said suit is in [fol. 9] substance and effect a suit against the State of Texas as well as one against its officers and agents in their official capacities, and that in legal effect the parties to said action are identical.

X

It is further shown that in said action in said United States District Court, United Gas Public Service Company alleges in substance and effect that the order entered by the Railroad Commission of Texas fixed and prescribed a rate

confiscatory of its property used and useful in the public service, and alleged that said order is unconstitutional and upon said allegation a temporary restraining order out of said court enjoining and restraining your plaintiffs and each of them (except the State of Texas) from compelling or attempting to compel your defendant to observe said order of said Commission.

It is further shown that said writ issued out of said United States District Court and directed to your plaintiffs is returnable before three judges of the United States in the court room of said court at Houston, on the 31st day of July, 1933, at 10 a. m. and that your plaintiffs are commanded to appear and show cause, if any, why an interlocutory injunc-
[fol. 10] tion should not be issued further restraining and enjoining the enforcement of the Commission's order. It is further shown in this connection that said United Gas Public Service Company is asking in said cause for both an interlocutory and permanent injunction restraining your plaintiffs from enforcing the terms and provisions of said order of the Railroad Commission.

XI

Plaintiffs allege that the defendant is attempting to evade the laws of this State and the lawful order of the Railroad Commission of Texas fixing and prescribing rates and charges for the distribution and sale of natural gas within the limits of the City of Laredo, and that in charging a rate in excess of that prescribed by the Railroad Commission plaintiffs herein, and each of them, are suffering irreparable injury, and that there is no adequate remedy prescribed by the laws of this State which will protect the public interest involved and the rights of plaintiffs herein.

In this connection plaintiffs allege that the State of Texas has no adequate remedy at law to protect itself against the wrongs and injuries complained of herein, nor have the con-
[fol. 11] sumers of gas in the City of Laredo any adequate remedy to protect themselves against the wrongs and unlawful acts herein alleged and complained of, and that unless the relief herein sought is granted by this Honorable Court each and all of the plaintiffs will suffer irreparable injuries.

XII

Plaintiffs further show it is a charter duty of the defendant, as well as a duty imposed by the laws of this State, to

strictly observe and obey the lawful orders, rules and regulations of the Railroad Commission of Texas fixing and prescribing rates for the distribution and sale of natural gas and natural gas service; that the observance of said laws and of the orders of the Railroad Commission is made an absolute condition of their corporate existence; that the State of Texas and the public generally, and your plaintiffs, and the inhabitants of Laredo, particularly have a vital interest in the due and proper observance by the defendant of the laws of this State and of the orders, rules and regulations of the Railroad Commission fixing and prescribing rates, and that such orders are essentially for the benefit of the public generally; that such orders and the order involved [fol. 12] in this cause were intended to and do subserve the public interest, and that the duty of the defendant herein to observe said order is a public duty.

XIII

Plaintiffs are desirous of having the constitutional questions involved in the attack being made by United Gas Public Service Company upon the Commission's order heard and determined in the courts of this State, and to that end desire this court to enter a stay of proceedings in accordance with the provisions of Section 38, Title 28, U. S. C. A. to the end that all proceedings in the district courts of the United States will be stayed pending a final determination of this cause in the courts of this State.

XIV

This action is filed in this court in the nature of an appeal under the terms of Article 6059, Revised Civil Statutes, but such appeal is not taken because the plaintiffs herein are dissatisfied with the rates and charges prescribed in the Commission's said order, but primarily for the purpose of protecting the jurisdiction of this Court and its venue to hear and finally determine the matters in controversy and to [fol. 13] enforce the said order if it should be determined to be valid upon final hearing.

Wherefore, Premises Considered, plaintiffs pray that defendant be cited in terms of law to appear and answer herein and that upon final trial hereof plaintiffs have judgment against defendant, and that defendant be permanently and perpetually enjoined and restrained from charging or col-

lecting any rates or charges for natural gas or natural gas service within the limits of the City of Laredo except those particular rates and charges duly authorized and promulgated by the Railroad Commission of Texas, and that defendant be restrained from charging any rate in excess of that prescribed by the Commission in its said order.

Plaintiffs further pray, however, that pending a final determination of this matter in the courts of this State that this Honorable Court enter an order staying all proceedings by the Railroad Commission of Texas, or any of its members or employees or by the City of Laredo, and any and all of its officers and agents, or by any other person or official of this State under the order promulgated by the Commission fixing and prescribing the rates to be charged for gas within the [fol. 14] limits of the City of Laredo.

Plaintiffs further pray that this Honorable Court enter an order staying all proceedings under the laws of this State and under the rules and regulations of the Railroad Commission, either for mandamus, mandatory injunction, injunction, damages, penalties, quo warranto or forfeiture of charter pending the determination of this suit by this Honorable Court.

Plaintiffs further pray for such other and further relief, special and general, in law and in equity, to which it may show itself justly entitled.

James V. Allred, Attorney General; Elbert Hooper, First Assistant Attorney General; Hicks, Dickson, Bobbitt & Lange, by Robert Lee Bobbitt, Edward H. Lange, Attorneys for Plaintiffs.

[fol. 15] *Duly sworn to by R. C. Granberry. Jurat omitted in printing.*

[fol. 16] EXHIBIT "A" OF PLAINTIFFS' ORIGINAL PETITION

An Ordinance

Whereas, about the year 1921 the Border Gas Company, predecessor of the Texas Border Gas Company, then holder of the franchise for the sale of natural gas within the City of Laredo, was charging and receiving a much lesser rate than that now imposed for the sale of natural gas and about that time, upon representation of its then president that the gas supply was being rapidly exhausted, said company was permitted, without Ordinance, but by sufferance to impose a

higher rate, said company representing and agreeing that if the gas supply should increase that the rates would be again reduced to a reasonable amount; and,

Whereas, since said time, said company and its successor have continued to exact the present high rate, granting no reduction; and

Whereas, the gas supply has sufficiently increased and is now such as to demand that said agreement be complied with and that a reasonable rate be prescribed and imposed;

Now, therefore, be it ordained by the city council of the City of Laredo:

Section 1

That a reasonable and fair price for the sale and delivery of natural gas to consumers within the City of Laredo is hereby declared to be:

(a) A reasonable and fair price to be charged and received for natural gas sold and delivered to domestic consumers thereof is hereby declared to be the sum of $.40 for each one thousand cubic feet as registered by the gas meter installed by the holder of the franchise for the sale and delivery of natural gas.

* * * * * * *

Section 2

All charges for gas consumed shall be collected monthly by the seller, bills therefor to be rendered to the consumers on the first day of each and every month after this Ordinance becomes effective. If any consumer pays for the gas used by him in the previous month on or before the tenth day of [fol. 17] the month after the use of such gas, he shall be entitled to a discount of ten per cent from the rates hereinabove fixed, but if he fails to pay therefor on or before the tenth day of the month following the consumption of such gas, he shall not be entitled to the discount herein allowed.

Section 3

The franchise holder for the sale and delivery of gas shall be entitled to demand a minimum charge of $1.00 each month from each consumer regardless of the amount of gas consumed if the charge for the gas consumed in any month should be less than the sum of $1.00.

* * * * * * *

Section 5

It is ordered that the rates herein fixed become effective on the 1st day of January, A. D. 1932, and remain in effect thereafter.

* * * * * * *

Passed and Approved on this the 15th day of December, A. D. 1931.

Mayor, City of Laredo.

Attest: —— ——, City Secretary.

[fol. 18] EXHIBIT "B" OF PLAINTIFFS' ORIGINAL PETITION

Before the Railroad Commission of Texas

Gas Utilities Docket No. 49

In re the Appeal of TEXAS BORDER GAS COMPANY from an Ordinance of the City of Laredo, Texas

Joined and Heard With

Gas Utilities Docket No. 63

In re the Appeal of TEXAS BORDER GAS COMPANY from the Failure and/or Refusal of the City of Laredo, Texas, to Grant it an Increase in Domestic Gas Rates

Heard October 4 to October 11, 1932—November 9 to November 14, 1932

Opinion and Order

By the Commission:

The City Council of the City of Laredo on December 15, 1931, enacted an ordinance which provides for the fixing of rates for natural gas, as follows:

40¢ per M. C. F. for domestic consumption;
12¢ per M. C. F. for industrial consumption;
30¢ per M. C. F. for hotel and restaurant consumption;
25¢ per M. C. F. for school, church and hospital consumption, and for use in gas engines.

[fol. 19] The ordinance further provides for a discount of 10% for payment of bills within ten days of their ren-

dition; and under its provisions, the ordinance became effective January 1, 1932.

At the time of the enactment of the ordinance, the prevailing rate for natural gas for domestic purposes (which rate had prevailed since the year 1921) was 75¢ per M. C. F. with a 10% discount for payment within 10 days, and a minimum monthly bill of $1.00. No fixed rates applied as to non-domestic consumers.

The Texas Border Gas Company, the Company furnishing natural gas to consumers within the limits of the City of Laredo, not being satisfied with the provisions of the aforesaid ordinance, filed its appeal with the Commission and posted the required supersedeas bond, all in accordance with the provisions of Articles 6058-6059 R. C. S. of Texas (1925). These Articles provide, in substance, that when a municipality has, by ordinance, reduced existing gas rates the utility affected by such ordinance may appeal to the Commission and perfect such appeal by the filing of a bond conditioned as may be required by the Commission; and that the Commission after a hearing of the matter make such order as it may deem just and [fol. 20] reasonable in the premises and that any party at interest, if dissatisfied with the order or orders so made by the Commission may have a further hearing in a District Court of Travis County, Texas.

Prior to the time set by the Commission for the hearing of this cause, the South Texas Gas Company, the Company owning and operating the transmission properties and transporting the gas sold to the Texas Border Gas Company at the Laredo City Gate, was made a party to the proceeding.

Subsequently, the Texas Border Gas Company filed its application with the governing body of the City of Laredo for an increase in rates of natural gas supplied to domestic consumers on the following scale:

$1.50 net per month, which $1.50 would entitle a consumer to use 1000 cubic feet of gas during such month;
.90 net per M. C. F. for the next 2000 cubic feet of gas used during such month;
.70 net per M. C. F. for all additional gas used, during such month;
Minimum monthly bill $1.50 net.

No action having been taken on this application by the City of Laredo, at the expiration of 60 days after its presentation, the Texas Border Gas Company took the [fol. 21] necessary steps to perfect its appeal to the Commission under the provisions of Article 6058 (supra).

The Commission thereupon entered its order consolidating the two appeals and set the hearing for October 4, 1932.

By agreement of the parties a rate of 5¢ per M. C. F. was stipulated as a fair and reasonable price of gas at the well.

By appropriate pleadings the United Gas Public Service Company, a Delaware Corporation, entered its appearance in both appeals, alleging in substance that it had acquired the properties of both the Texas Border Gas Company and South Texas Gas Company, and that it adopted the pleadings of both of the said Companies theretofore filed with the Commission.

The matters at issue were heard by the Commission in hearings held at Laredo from October 4 to October 11, and from November 9 to November 14, 1932 at which time both the Gas Company and the City presented their evidence before the Commission; every phase of the controversy was fully presented, resulting in a stenographic record of some fourteen hundred pages and of more than twenty [fol. 22] exhibits, containing several hundred pages; and subsequent to the conclusion of the hearing, counsel for both the Company and the City prepared and filed with the Commission exhaustive briefs, which were of particular aid to the Commission to arriving at a just and fair solution of the matters before it, in this cause.

Texas Border Gas Company. South Texas Gas Company.

Historical

The Texas Border Gas Company, a Texas Corporation, and its predecessor, the Border Gas Company have been distributing natural gas in the City of Laredo since the year 1909, under a twenty-five year franchise granted by the City in February, 1909. During the year 1910 the original Company (Border Gas Company) began and completed the construction of a transmission line from what was known as the Reiser Field, to the Laredo Gate, a distance of approximately 22 miles; during the same year it also constructed a distribution system in the City of Laredo.

In the year 1916, the transmission line was extended for a distance of approximately 26 miles to what is known as the Jennings Field; in the years 1922 and 23, an additional transmission line of some 24 miles was laid to the Carolina-Texas Field.

[fol. 23] From the year 1909 to April, 1928, the original Company, the Border Gas Company, owned and operated the producing, the transmission and the distribution systems, supplying natural gas to the consumers, in the City of Laredo. In the month of April, 1928, that portion of the properties comprising the distribution system was acquired by the Texas Border Gas Company; the Transmission system properties were, at the same time, acquired by the South Texas Gas Company; and the producing wells and other production property were taken over by the South Texas Production Company, which latter Company is not a party to these proceedings.

Inter-Related Companies

Texas Border Gas Company and South Texas Gas Company are operated as units of the United Gas Public Service Company, which latter Company is, in turn, a unit of the United Gas System. Both appellant Companies are under common stock ownership and are under the same common management and control.

Texas Border Gas Company is a distributor of natural gas not only in the City of Laredo but also in the surrounding territory, which includes a number of small communities situated in that vicinity.

All gas distributed by Texas Border Gas Company in [fol. 24] the City of Laredo is purchased by it from the South Texas Gas Company under the terms of a gate rate contract between the two companies, entered into on the 10th day of April, 1928, providing for the following scale of rates:

30¢ per M. C. F. for all gas sold and delivered to domestic consumers;

14¢ per M. C. F. for all gas sold and delivered to industrial consumers.

In view of the inter-related company operation and ownership, the gathering, transmission and distribution properties used and useful in serving the City of Laredo were appraised and valued as a combined property.

Statement of the Issues

The major questions which present themselves for determination by the Commission in this case are the following:

1. What is the present fair value of the properties of the Company, used and useful in serving the City of Laredo?

2. What is a fair and reasonable annual allowance for depreciation on the property of the Company, used and useful in serving the City of Laredo?

3. What is a reasonable rate of return for a company supplying natural gas in the City of Laredo?

[fol. 25] 4. What schedule of rates will yield that return?

Allocation

As the distributing company (Texas Border Gas Company) serves not only natural gas consumers in the City of Laredo, but also consumers in a number of other communities situated in the Laredo area, it becomes necessary to allocate to Laredo only that portion of the Company's property used and useful in serving the rate payers in such City.

The Company's engineer, Greene, applied a method of allocation under which he utilized certain percentages representing the ratio of the volume of gas in M. C. F. delivered to the Laredo City Gate, to the total volume of gas delivered within the Laredo district, including Laredo (71.29%); and the ratio of the volume of gas delivered to consumers outside the Laredo District, to the total volume of gas delivered to the Laredo City Gate (96.45%).

The City's Engineer, Elrod, utilized a weighted average per cent (83.18%), arrived at as an approximate mean between the two percentages used by the Company's Engineer, Greene.

As neither Consumers' Demand, nor Load Factor data was available in this case, we are of the opinion, from the [fol. 26] evidence before us, that the application of the weighted average per cent utilized by the City comes closest to producing a fair and correct allocation of the properties involved, especially, since the properties of the two companies are not being valued separately herein, but as a unit.

Present Fair Value, or Rate Base

Neither in statutory law nor in court decisions have we been able to find any definite, fixed rule, basis or formula for the determination of the present fair value of the property of a utility used and useful in serving the public.

While, it is true, as is contended for by the Company, that, it is the present fair value of the property that is to be determined, still, the application of the "reconstruction cost new" method alone, to the exclusion of other recognized methods and factors, would necessitate a dependence upon "that most unsatisfactory evidence, the testimony of expert witnesses employed by the parties."[1]

Ultimately, in all rate cases the rate making body finds that it must approach the question of "fair value" in the [fol. 27] light of the holding of the Supreme Court of the United States as set forth in the case of Smyth v. Ames, 169 U. S. 546; 42 L. Ed. 819, wherein the Court said:

"And in order to ascertain that value, the original cost of construction, the amount expended in permanent improvements, the amount and market value of its bonds and stock, the present as compared with the original cost of construction, the probable earning capacity of the property under particular rates as prescribed by statute, and the sum required to meet operating expenses, are all matters for consideration, and are to be given such weight as may be just and right in each case. We do not say that there may not be other matters to be regarded in estimating the value of the property."

The historical cost of the properties, which term necessarily embraces, (a) the original cost of construction, (b) the amount expended in permanent improvements, and (c) a comparison of the present with the original cost of construction, as enumerated in the Smith v. Ames case must, therefore, be given its proper place by the rate making body..

In the present case, the Company in adducing its evidence before the Commission relied solely upon the reconstruction cost new method, contending that, while histori-

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[1] Knoxville v. Knoxville Water Company, 212 U. S. Page 1; 53 L. Ed. 371.

cal cost may have a limited evidentiary value in rate cases, it has no proper place in the instant case, because the early records of the company were inadequately kept, and there-
[fol. 28] fore, provide no correct basis upon which to compute such cost.

The City, however, takes the position that the reconstruction cost new, as well as the historical cost methods are equally applicable; and adduced testimony at length, which we believe fully bears out its contention, namely, that both should be given due consideration by the Commission.

Elements of Value

The Company's Engineer, Greene, in his appraisal of the properties used and useful in serving the City of Laredo as of August 1, 1932, arrives at the following result:

Rate Base:	R. C. N.	R. C. N.—Less Depreciation
	$1,415,787	$1,231,601

The City's Engineer, Elrod, obtains the following results:

Rate Base:	R. C. N.	R. C. N.—Less Depreciation
	$1,029,155	$810,698

In addition, the City adduced evidence showing the depreciated historical cost of the properties as of July 31, 1932, to be $709,991.23.

The properties of the Company are divided into three groups: (a) Gathering system; (b) Transmission system, and (c) Distribution System.

[fol. 29]

Gathering System

The Company includes in its appraisal two gathering systems—one situated in the East Jennings Field and the other situated in the West Jennings Field. Its appraisal gives the total depreciated cost of the two systems as $15,868.

The City contends that the West Jennings gathering system is the only one of the two that may possibly be useful in serving Laredo and it includes such gathering system at a depreciated cost of $10,342; this accounts for the net difference of $5,526 between the Company's and the City's allowance for this item.

Viewed in the light of the evidence before us, the inclusion of the East Jennings Gathering System in the rate base herein is not justified.

Transmission System

The Company's appraisal includes an allowance of $635,230 (new) and $532,133 as the depreciated cost of its transmission system.

The City on the other hand allows $553,353 (new) and $383,960 as the depreciated cost of the transmission system, thus showing a difference between the two (in cost depreciated) of the sum of $148,173. Of this latter amount [fol. 30] $37,010 is accounted for in the omission by the City of the Aguilares-Oilton line and the remainder is the result of the difference in findings of per cent condition.

While the City includes an allowance, exclusive of telephone line, of $124,668 as the depreciated cost of that portion of the transmission lines extending from Pescadito Junction to the Jennings Field, a distance of approximately 26 miles, the record discloses that this line was used on only one day during the twelve months' period ending July 31, 1932, in transporting gas to Laredo; further, the condition of this line is such that it could neither safely nor profitably transport the necessary volume of gas to the City, and that if the Company's properties were reproduced, this section of the line would not, in our opinion, be necessary in transporting the supply of natural gas required by the City of Laredo.

Distribution System

The Company's exhibit makes an allowance of $563,994 (new) and $477,141 as depreciated cost, while the City allows $564,754 (new) and $460,199 as depreciated cost of this portion of the properties. The net difference of $16,942 is, with the exception of the small difference in the sum [fol. 31] of $760, attributable to the divergence of views of the engineers as to present per cent condition.

Working Cash

The City's Engineer, Elrod, allowed the Company for cash working capital, or working cash, the sum of $11,157, which figure was computed upon the basis of two months operating expenses less gas purchases. The Company's

Engineer, Greene, computed the amount claimed, $24,223, on the basis of 60 days operating expenses, plus prepaid accounts, gas purchases and a minimum bank balance. We believe that this item should be computed on the basis of 45 days operating expenses, plus the cost of purchased gas; although in the recent opinion of the Ohio Public Utilities Commission, in the case of Re: Columbus Gas & Fuel Company, P. U. R. 1933 A.337, the rate-making body in that case held that the working cash "should be limited to one and a half months rather than two months, and that the cost of gas purchased (from an affiliated Company) should be eliminated."

As both the City and the Company are in accord as to the sum allowable for Material and Supplies, this item of value is not at issue.

[fol. 32] Going Concern Value

Of all intangibles entering into the rate structure the item "going concern value", is manifestly the most elusive and consequently has been allowed in varying percentages under the facts of particular cases, and entirely disallowed in others.

That this item is an element of value, upon adequate proof, to be taken into consideration by the rate-making body in arriving at a fair and proper rate base, is generally recognized. However, in the giving of such requisite consideration it is not essential that the item be given a separate designation or description.

This phase of the question was passed upon by the Supreme Court of the United States in its recent decision in the case of Los Angeles Gas & Electric Corporation v. Railroad Commission of the State of California, — U. S. P. 77; L. Ed. —, (not yet officially reported), wherein the Court, speaking through Mr. Chief Justice Hughes, says:

"The record affords no adequate basis for criticizing the allowance made by the Commission for materials and supplies and working capital, and thus the entire excess may be regarded as applicable to whatever intangible value the property had as a going concern. The fact that this margin in the rate base was not described as going value is unimportant, if the rate base was in fact large enough to embrace that element."

[fol. 33] The Company contends for an allowance of going concern value as follows:

(a) In connection with its gathering system, the sum of $3,122;

(b) In connection with its transmission system, the sum of $70,659; and

(c) In connection with its distribution system, the sum of $81,301; or, a total of $155,082.

The City on the other hand makes no separate allowance for this element of value in its appraisal, contending that its value was capitalized by the Company when it specifically included this item in its purchase cost of the original properties in the year 1910, and was so treated by the Company; further, that the elements entering into its value had been charged to operating expenses by the Company, and that any additional or remaining portion had been fully considered and allowed by it in the manner in which its engineers evaluated the property.

Accrued Depreciation (Per Cent Condition)

The amount of accrued depreciation is, or the per cent condition of the properties under consideration, was testified to at length by Engineers Elrod and Shaw for the City and by Engineers Greene and McGary for the Company. [fol. 34] The Company contends that the inspection,—or observation—method is the only method to be employed in determining the accrued depreciation or the per cent condition of its properties; and its Engineers, in determining the present per cent condition relied solely upon what is known as the inspection method.

On the other hand the City takes the position that, while the inspection method is of value in determining the amount of accrued depreciation such method cannot be singled out to the exclusion of all other recognized methods; and its engineers employed the inspection method, in combination with what is known as the age-life method of determining the present per cent condition of the properties.

A considerable portion of the distribution system of the Company's properties lies under pavement; all of the engineers testified that due to the impracticability of disturbing the pavements of the City's thoroughfares, no

actual physical inspections were made of the structures under pavement. It is evident then, that the determination of the per cent condition of the property lying under pavement, as made by the Company's engineers, was pure speculation, while on the other hand, the determination of the [fol.35] per cent condition of such property by the City's engineers was, to say the least, based upon a reasonable assumption—that of the age and probable life of such elements.

The largest single item of accrued Depreciation, as determined by the City's engineers, was in connection with the Pescadito-Jennings transmission line, laid 16 years prior to the date of the hearing. It was developed that this 6 inch steel line had not been adequately protected with enamel, or other coating, and that the line lay through a territory in which there were many "hot spots", or areas of soil of a highly corrosive nature, and that in these areas, the pipe was practically of zero value. The dollar difference in this one item alone, in the amounts of depreciation deducted by the Engineers for the Company and for the City is $53,289. If this difference were eliminated, the respective per cent conditions would be:

Company	84.1%
City	80.5%
Difference	3.6%

Engineer McGary's testimony disclosed that he had encountered only one of the many "hot spots" along this line; nor was Engineer McGary concerned about how many such "hot spots" there might be. While his methods of determining per cent condition may be used in highly technical [fol. 36] laboratory work, we are of the opinion that if they form the sole basis of the calculations made, they are very impracticable, in the field.

Engineers Elrod and Shaw testified as to the condition of the Pescadito-Jennings transmission line and concomitant structures from actual inspection, coupled with the consideration of the age of the pipe, the character of its protective coating, and the character of the soil in which it was laid.

After viewing the testimony of the respective Engineers, the methods employed by each, and the conditions encountered, we find that the over-all per cent condition of the properties is 78%.

Annual Allowance for Future Depreciation

The estimation of the annual rate of depreciation is of importance; however, a consideration of what rates have been allowed in other cases, while enlightening, is not of great value here, as each case is in some measure different from each other case, and depends upon the facts of the particular case. Since there is no established rule or formula upon which to proceed with certainty in the matter, we believe that the past experience of the company itself, affords a criterion that merits our consideration.

[fol. 37] The only evidence in the record of the past experience of the Company with respect to its actual requirements for retirements is provided by the City's Exhibit E. Here it is shown that, had an annual sum of equal to 2 per cent of the cost of the Companies' properties been set aside consistently it would have exceeded the actual requirements for retirements ($252,025) by the sum of $5,557. Also, that had such annual sum been accumulated at the rate of 5%, there would have been a surplus, over and above actual requirements, of $391,933.

While it is true that rate payers, although having contributed to a depreciation reserve far in excess of the utility's actual requirements, may not have such excess accumulation made applicable to future rates, nevertheless, the depreciation reserve so reflected by the Company's books and records may well be utilized by the Commission as a guide in determining the rate of depreciation sufficient to meet future needs.

The Supreme Court of the United States in the case of Smith v. Illinois Bell Telephone Company, 282 U. S. 133; 75 L. Ed. 255, speaking through Mr. Chief Justice Hughes, says:

[fol. 38] "While it has been held by this court that property paid for out of moneys received for past services belongs to the Company, and that the property represented by the credit balances in the reserve for depreciation cannot be used to support the imposition of a confiscatory rate (Public Utility Comrs. v. New York Teleph. Co. 271 U. S. 23; 70 L. Ed. 808; P. U. R. 1926 C. 740; 46 Sup. Ct. Rep. 363), it is evident that past experience is an indication of the company's requirements for the future. The recognition of the ownership of the property represented by the reserve does

not make it necessary to allow similar accumulations to go on if experience shows that these are excessive."

Engineer Elrod, for the City, expressed the opinion that an allowance of 2 per cent per annum represents a sufficient sum for future annual depreciation for the Company.

Engineer Greene, for the company, testified that the Company should be allowed depreciation at the rate of 5 per cent on the distribution system, 6 per cent on the transmission system; and 10 per cent on the gathering system.

It is obvious that the rates of depreciation on property units installed within the past few years, and on those units to be installed in the future, need not be as large as the rates that were applicable previously due to the fact that more permanent and improved materials and appliances have been, and are being, and will be used, than was the case in the past. For instance, the greater portion of all pipe lines, in- [fol. 39] volved here, laid prior to 1916, was not protected with covering. Of recent years, no unprotected pipe line has been laid, nor is it probable that any such pipe will ever be laid again. Scientific discoveries and improved materials and better knowledge of methods are continually reducing the cost of depreciation.

In view of the conflicting testimony as to the physical condition of certain portions of the properties, we are of the opinion that a rate of depreciation of 2 per cent may be too low for application in this particular case. On the other hand, we believe that the rates of five, six and ten per cent, respectively, as asked for by the Company are far in excess of its future needs. Therefore, in the light of the record before us, we are fixing the annual depreciation rate at 3 per cent which we consider ample to meet the Company's future requirements.

General Overheads

The allowances claimed for general overheads by this Company, and by the City respectively, are as follows:

	Company	City
Preliminary Organization	$35,505	$18,371
Engineering and Superintendence	50,124	17,408
Administration and Legal	33,831	10,445
Taxes during Construction	6,257	4,593
Interest during Construction	48,581	24,371
Total	$174,298	$75,188

[fol. 40] Claims for these items are based on assumptions and calculations of both the Company's and City's engineers. The amount contended for by the Company is approximately 19.96 per cent of its appraised value of the physical properties, while the amount set up by the City is 10 per cent of the City's total, as reflected in its appraisal of the physical properties.

Available Revenue

The Company presented a "set up" (Ex. 4) of operating revenues and expenses for the 12 months' period ending July 31, 1932, only, for consideration in the computation of a fair return upon its plant value. On the other hand, the City presented a similar "set up" (Ex. L) covering the years ending June 30, 1929, 1930, and 1931, and for the year ending July 31, 1932,—a period of four years; it contended that since the year ending July 31, 1932, was patently a subnormal business year, such single year should not be taken, alone as the test period for the computation necessary. It is our opinion that the one year ending July 31, 1932, should not be taken as the test period. It is a matter of common knowledge, we believe, that from a general business standpoint, the year 1932 was the worst year since 1929. The [fol. 41] City's Exhibit L shows that the fiscal year 1931, in comparison with the years immediately preceding it, was subnormal also; therefore, the year 1931 should not be taken as the test period, nor should an average of these two years be taken.

Just as it would be unfair to the City to take 1932, or 1931, alone, or an average of both, as the test period, it would be unfair to the Company to take the year 1930, or even an average of the 3 years 1930, 1931, and 1932, as the test period, as it is shown that the year 1930 was the best year, in point of gross revenues, that the Company had experienced since 1928.

The year 1929, while it was a better year than 1931 in point of gross revenue by $27,168, was a leaner year than 1930 by $38,153; its inclusion in the test period tends to equalize the effect of the inclusion of the better year 1930.

Therefore, in the light of ample lawful precedent for the taking of an average of 4 successive years immediately preceding the date of the investigation, as the test period, and because in so doing we believe that justice is done to both parties, we are of the opinion and hold that an average of

revenues and expenses for the four fiscal years 1929, 1930, 1931 and 1932 constitutes the test period for the computa-
[fol. 42] tion of the rate structure upon which a fair return is to be predicated.

The number of consumers of natural gas in the City of Laredo, and the volume of gas consumed is reflected in the Company's sworn reports on file with the Commission for the years 1929, 1930, 1931 and 1932.

The Company contends for an allowance of 1 cent per M. C. F. of gas purchased in the Carolina-Texas Field, as a gathering charge. The gathering lines in this field are not the property of the Company, but are the property of the Southern Gas Company, an affiliate. The basis of the Company's contention for the 1 cent gathering charge is a contract (Ex. 10) between it and its affiliate company, which contract stipulates a charge of 1 cent per M. C. F. for the use of its gathering lines and facilities.

The Company witness Abernathy, its Superintendent of Transportation, testified that the reasonable cost of constructing this gathering line and facilities would be approximately $25,000. On the basis of the volume of gas purchased for Laredo (as per 5 year average = 730,404 M. C. F.) assuming that all gas purchased comes from the Carolina-Texas Field, (although, included in the City's
[fol. 43] Rate Base is a sum of $10,342 for the present value of a gathering system in the West Jennings Field), this gathering charge would amount to $7,304 per annum. As a comparison, a fair return on the cost new of this Carolina-Texas gathering system (based on 7% return 3% depreciation, plus an approximate 10% operating charge) is 20%, or $5,000. Of this total, however, only approximately $4,000 would be allocable to Laredo; obviously, the fair return on the present depreciated value of the existing gathering system would be considerably less. In the light of the evidence herein, we are of the opinion that if the 1 cent gathering charge contract had been made at "arms length", and not by two affiliated companies, a reasonable gathering charge would very probably have been set at ¼ of one cent per M. C. F. rather than at 1 cent. In view of the circumstances in connection with this particular transaction, we are of the opinion that a gathering charge of ½ of 1 cent per M. C. F. of gas purchased from the Carolina-Texas Field is a fair charge allowable in connection with the computation of the rate structure herein.

The Company includes in its operating statement a charge designated "pipe line rental" covering an alleged expense incurred by the Company to an affiliate for the use of a sec-
[fol. 44] tion of gas transmission line situated in the East Jennings Field. The City takes the position that this item is not properly chargeable to the Laredo rate payers as it is not being used to transport gas to Laredo, nor is it necessary to such transportation. The record, in our opinion, does not justify the inclusion of this item as chargeable against the rate payers in the City of Laredo.

The Company also contends for the allowance as proper operating expense of certain amounts claimed for management fees, loss on bad debts, advertising, general office expense (prorated between interconnected companies), special payrolls of the United Gas Company (the parent Company), general expense (prorated with Southern Gas Company, an affiliate company), maintenance of general structure, testing mains for leaks, Laredo Rate Case expense, and Donations.

It is the contention of the City, on the other hand, that such allowance in favor of the Company as an operating charge is not properly supported under the facts and circumcumstances in this case, and the City asks for its elimination in the computation of the fair rate of return.

From the facts reflected by the record before us, we find that the Company has not shown itself entitled to the allow-
[fol. 45] ances which it asks the Commission to make in this regard. However, we feel that reasonable compensation should be allowed the Company in connection with loss on bad debts, general office expense, advertising, maintenance of general structures, donations, testing mains for leaks, and the Laredo Rate Case expense (amortized over a period of ten years), and we have made allowance for all such, in arriving at a just and fair rate of return in this case.

In arriving at a decision and making an order herein that is deemed by the Commission to be just and reasonable, we have carefully and fully considered all the evidence presented and all the facts and circumstances reflected by the record herein; and upon giving due consideration to all the elements of value inhering in the property involved in this proceeding, have valued the Company's properties as an operating concern, with business attached; have made ample allowance for materials and supplies, working cash, and general overheads; and have included in such value the

Pescadito-Jennings Transmission Line and the West Jennings Gathering System (although the record clearly discloses that these last two named property items are neither being used, nor are they necessary as standby equipment), and we find the present fair value of the properties of the Company used, and useful in the gathering, transporting [fol. 46] and distributing of natural gas within the City of Laredo, Texas, to be in the sum of $885,000.

The said total present value of the properties thus found by us exceeds substantially the original or historical cost thereof, as shown by the record in this case.

In view of the facts and circumstances hereinabove enumerated and because of the valuation of the properties as herein stated, we find that no additional and separate allowance for going concern value is justified in this case, and no such additional and separate item is allowed.

We find that an annual rate of return equal to seven per cent (7%) of the present fair value of the properties as herein found is adequate.

We find that the following schedule of rates is just and reasonable herein, and that its application will produce a net return in excess of seven per cent (7%) per annum on the present fair value of the properties, after provision for operations and reserve for depreciation.

Rate Schedule

On natural gas for all domestic uses, 55 cents, net, Per M. C. F.

Minimum bill per user per month—$1.00.

[fol. 47] Penalty for non-payment within 10 days from the date of rendition of bill, 10% of the amount thereof.

The proper order will be issued putting into effect the above findings.

Order

In the above numbered and entitled cause, the Commission having heard the evidence presented by all parties at interest pertaining to the matters and things therein involved, and having now carefully and duly considered the same, and having filed in this case its opinion in writing setting forth its conclusions and findings, which said opinion is hereby made a part of this order, it is

Ordered, Adjudged and Decreed by the Railroad Commission of Texas, that the rates to be charged to the con-

sumers of Natural Gas within the City of Laredo, Texas, from and after the 1st day of January, A. D. 1932, shall be as follows:

For natural gas for domestic use, 55 cents per M. C. F.

Minimum bill per user per month—$1.00.

Penalty for non-payment of bills within 10 days from date of rendition, 10% of the amount thereof.

It is Further Ordered By the Railroad Commission of Texas that no fixed charge be set for the sale of natural [fol. 48] gas to non-domestic consumers in the City of Laredo.

It is Further Ordered by the Railroad Commission of Texas that the Texas Border Gas Company shall refund to the city of Laredo for the benefit of the domestic gas consumers the difference between the amount collected by the Border Gas Company and the amount that would have been due by domestic consumers under this order.

It is Further Ordered, Adjudged and Decreed by the Railroad Commission of Texas that the application of the Texas Border Gas Company filed herein on the 16th day of September, 1932, (Gas Utility Docket No. 63), for an increase in the rates to be charged to domestic consumers of natural gas within the City of Laredo, Texas, be, and the same is hereby denied.

Dated at Austin, Texas this the 13th day of June, A. D., 1933.

Railroad Commission of Texas by (Signed) Lon A. Smith, Chairman; (Signed) C. V. Terrell, Ernest O. Thompson, Commissioners.

Attest: C. F. Petet, Secretary. (Seal.)

[File endorsement on cover of plaintiffs' petition omitted.]

[fol. 49] In District Court of Travis County

[Title omitted]

Order Staying Proceedings—July 26, 1933

On this the 26th day of July, 1933, came on to be heard the motion of the plaintiffs in the above entitled and numbered cause for a stay of all proceedings under the order

of the Railroad Commission of Texas, dated June 13, 1933, fixing and prescribing the rates and charges to be collected by United Gas Public Service Company for natural gas and natural gas service within the City of Laredo, Texas; and all proceedings in connection therewith under the laws of this State and under the rules and regulations of the Railroad Commission; and the Court, having considered said motion and the facts alleged in connection therewith, is of the opinion that the same should be granted.

It is therefore Ordered by the Court that all proceedings against defendant, United Gas Public Service Company under and by virtue of the order entered by the Railroad Commission of Texas on June 13, 1933, fixing and prescribing rates to be charged for natural gas and natural gas service within the limits of the City of Laredo, and all pro- [fol. 50] ceedings under and by virtue of the laws of this State and the rules and regulations of the Railroad Commission of Texas, be and the same are hereby stayed pending determination in this court of the matters and controversies involved in this cause.

It is further Ordered that the Railroad Commission of Texas and Lon A. Smith, C. V. Terrell, and Ernest O. Thompson, and Miriam A. Ferguson, Governor of Texas, and James V. Allred, Attorney General of Texas, and the City of Laredo, and Albert Martin, Mayor of the City of Laredo, and Louis Franklin, W. S. Cantrell, E. S. Russell, T. Leyendecker, H. Cluck, J. Henry and B. Salinas, members of and composing the City Council of the City of Laredo, and M. J. Raymond, City Attorney of the City of Laredo, or any other department, officer, agent, servant or employee, and all other persons in this State, shall refrain from instituting or prosecuting any proceedings against defendant, United Gas Public Service Company on account of said order of said Railroad Commission entered on June 13, 1933, or from attempting to enforce any of the duties, obligations and requirements imposed upon the defendant herein by said order or by the laws of this State, whether by suit or mandamus, mandatory injunction, in- [fol. 51] junction, penalties, damages, quo warranto, forfeiture or receivership, or for any other penalties pending a decision by this Court of the matters and things involved in this suit, and all said State officials, their agents, servants and employees and all other persons shall refrain from enforcing or attempting to enforce the terms and provisions

of said order of the Railroad Commission against the defendant until the determination of this cause in this court.

It is further ordered that the defendant herein shall not be subjected to any penalties, damages or forfeitures on account of its failure to comply with the terms and provisions of the said order of the Railroad Commission entered on June 13, 1933, or on account of any provisions of the statutes of this State where such failure to comply with the same has taken or takes place before the final determination of this suit.

C. A. Wheeler, Judge, 53rd District Court of Travis County, Texas.

[File endorsement omitted.]

[fol. 52] IN DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF TEXAS, LAREDO DIVISION

In Equity. No. 32

UNITED GAS PUBLIC SERVICE COMPANY, Plaintiff,

v.

LON A. SMITH et al., Defendants

STAY ORDER—Filed August 7, 1933

On this the first day of August, 1933, came on to be heard the application of United Gas Public Service Company, plaintiff, for an interlocutory injunction in the above entitled and numbered cause before a court of three judges duly called and assembled in accordance with Section 266 of the Judicial Code of the United States as amended. All defendants appeared and answered subject to their motion for stay of proceedings and other motions on file herein. Thereupon the motion of defendants for stay of proceedings was first heard and considered.

* * * * * * *

And the defendants herein having announced in open [fol. 53] court, by and through Elbert Hooper, First Assistant Attorney General, the counsel of record for said defendants and by whom said defendants appeared in this court, that said defendants, the State of Texas, Railroad Commission of Texas, Lon A. Smith, C. V. Terrell, and Ernest O. Thompson, individual members of said Railroad

Commission of Texas, Miriam A. Ferguson, Governor of the State of Texas, and James V. Allred, Attorney General of Texas, and the City of Laredo, Albert Martin, Mayor of the City of Laredo, and Louis Franklin, W. S. Cantrell, E. S. Russell, T. Leyendecker, H. Cluck, J. Henry and B. Salinas, constituting and composing the City Council of the City of Laredo, and M. J. Raymond, City Attorney of the City of Laredo, and each and all of them, did not desire to enforce, and had no intention of enforcing or attempting to enforce against the plaintiff herein, United Gas Public Service Company, any of the pains, penalties or forfeitures provided for by law by reason of any violation of the provisions and requirements of said order by said United Gas Public Service Company committed or done by said plaintiff herein at any time before the final determination of said cause No. 52,774, on the docket of the fifty-third district Court of Travis County, Texas, and [fol. 54] said Assistant Attorney General for said defendants herein announced in open court that said defendants would consent and agree to an injunction by this Court entered in this cause restraining said defendants and each of them from at any time enforcing or attempting to enforce against the plaintiff herein, United Gas Public Service Company, any of the pains, penalties or forfeitures of said act that may arise or accrue because of, or by any reason of any violation of the provisions and requirements of said order by plaintiff herein committed or done herein by the plaintiff herein, United Gas Public Service Company, at any time prior to final determination of said Cause No. 52,774; and,

It appearing to the Court that by reason of said stay order entered in said cause No. 52,774 in the Fifty-third District Court of Travis County, Texas, and by reason of the aforesaid statements of the defendants herein in open court, by and through Elbert Hooper, First Assistant Attorney General, that the plaintiff herein, United Gas Public Service Company, is fully protected from the imposition of any and all pains, penalties and forfeitures provided by said act and arising by reason of the violation of any of the provisions and requirements of said act by the [fol. 55] plaintiff, United Gas Public Service Company, done at any time prior to the final determination of said cause No. 52,774 on the docket of said State district court, and that upon the entry of an interlocutory injunction in

this cause in compliance with the consent statements of said Assistant Attorney General, Elbert Hooper, and of the stay order of this court, the requirements of Section 266, Judicial Code (28 U. S. C. A. Sec. 380) will be complied with.

It is therefore, Ordered, Adjudged and Decreed that the defendants, the State of Texas, Lon A. Smith, C. V. Terrell and Ernest O. Thompson, constituting and composing the Railroad Commission of Texas, Miriam A. Ferguson, Governor of the State of Texas, and James V. Allred, Attorney General, and the City of Laredo, Albert Martin, Mayor of the City of Laredo, and Louis Franklin, W. S. Cantrell, E. S. Russell, T. Leyendecker, H. Cluck, J. Henry, and B. Salinas constituting and composing the City Council of the City of Laredo, and M. J. Raymond, City Attorney of the City of Laredo, and all of the assistants, agents, attorneys and representatives of such defendants be, and each of them is hereby restrained and enjoined from en- [fol. 56] forcing or attempting to enforce by any means or methods against the plaintiff herein, United Gas Public Service Company, said Order of the Railroad Commission of Texas, or any of the pains, penalties or forfeitures provided by law for any such violation of an order of said Commission by reason of the violation of any of the provisions and requirements of said order, or committed by the plaintiff, United Gas Public Service Company at any time prior to final judgment in cause No. 52,774 on the docket of the Fifty-Third District Court of Travis County, Texas.

It is further Ordered that all proceedings in this cause shall be stayed in this court pending the final determination of cause styled the State of Texas et al v. United Gas Public Service Company, No. 52,774 on the docket of the Fifty-Third District Court of Travis County, Texas; however jurisdiction is hereby retained in this court to enter such other and further orders upon the motion of either party necessary to protect the jurisdiction of this court or to protect the rights of any party herein,

J. C. Hutcheson, Jr., United States Circuit Judge.
T. M. Kennerly, United States District Judge.
William I. Grubb, United States District Judge.

[File endorsement omitted.]

[fol. 57] IN DISTRICT COURT OF TRAVIS COUNTY

[Title omitted]

DEFENDANT'S FIRST AMENDED ORIGINAL ANSWER—Filed March 5, 1934

Comes United Gas Public Service Company, defendant, and without waiving its pleas heretofore filed herein and still insisting on such pleas and with leave of court first had and obtained, filed this its First Amended Original Answer in lieu of its Original Answer heretofore filed herein and says:

A.

* * * * * * *

2. Defendant demurs and excepts to plaintiffs' said petition and says that the same is insufficient in law and in equity to support a final judgment for injunction as prayed therein, because:

(a) It appears from said pleadings that said gas rate sought to be enforced was unlawfully fixed, in that the same is not supported by any or any legally sufficient findings of fact from the evidence in the record of the hearing before the commission.

* * * * * * *

[fol. 58] (c) It appears from said pleadings that the opinion and order of the Commission purporting to support and promulgate the $0.55 rate sought to be imposed here are unenforceable and are repugnant to defendant's rights, in that the same do not contain the findings of fact requisite and legally sufficient to support the reasonableness and validity thereof.

Plaintiff, therefore, prays that each ground of demurrer and exception above set forth be sustained.

* * * * * * *

4. Defendant excepts and demurs to the joinder, as plaintiffs in this cause, of the State of Texas, Miriam A. Ferguson, in her official capacity as Governor of Texas, and James V. Allred in his official capacity as Attorney General of Texas, because it appears from plaintiffs' said

petition as a matter of law that the parties last above named are neither necessary or proper parties plaintiff in this cause, singly or collectively, individually or in their official capacities. Defendant, therefore prays that this exception and demurrer be sustained, that the suit of the parties plain-
[fol. 59] tiff last above mentioned be abated and that all parts of plaintiffs' said petition naming said last named parties as plaintiff be stricken.

* * * * * * *

C

* * * * * * *

Answering further if required, defendant United Gas Public Service Company says:

I

Since about 1910, defendant and its predecessors in title have owned and operated a natural gas distribution system in the City of Laredo, Texas, and have since supplied and furnished natural gas and natural gas service to the inhabitants of said City. Since about 1921, the established rates charged and collected by defendant and its predecessors in title for natural gas served for domestic use have been $0.75 per MCF., 10% discount for prompt payment of bills,
[fol. 60] minimum bill $1.00 per month. On December 15, 1931, the City Council of the City of Laredo enacted an ordinance prescribing the rates for natural gas and natural gas service in Laredo, a copy of which ordinance is attached to plaintiffs' petition and marked Exhibit "A". Prior to January 1, 1932, an appeal from such ordinance was taken to the Railroad Commission of Texas, pursuant to Article 6058, Revised Statutes of Texas, 1925. This appeal became Gas Utilities Docket No. 49. Upon the filing of a bond the Railroad Commission entered an order in such appeal suspending and superseding said ordinance of the City of Laredo and ever since said time defendant has charged and collected the existing rate above set forth, which will be sometime described herein as the $0.75 rate.

In June, 1932, defendant's immediate predecessor in title to the above described property made application to the City Council of the City of Laredo for an increase in domestic rates, and upon the failure of the City of Laredo to grant such application and/or take any action with ref-

erence thereto, an appeal was taken to the Railroad Commission of Texas pursuant to said Article 6058, which appeal became Gas Utilities Docket No. 63.

[fol. 61] The Railroad Commission of Texas consolidated Gas Utilities Dockets Nos. 49 and 63 for hearing. A hearing was held with respect thereto in October and November, 1932, and full testimony was given with respect to defendant's natural gas gathering, transmission and distribution system properties and the value thereof used and useful to serve natural gas and furnish natural gas to and within the City of Laredo and with respect to the gross revenues, operating expenses and the net operating revenue being yielded by existing rates. All proceedings and testimony in such hearing were recorded and by prayer and motion contained in the record of such hearing, defendant requested the Commission to make full and specific findings of fact from the testimony in such record in support of any order made by the Commission therein. On June 13, 1933, without notice to this defendant, the Commission entered and promulgated the opinion and order attached to plaintiffs' petition and marked Exhibit "B", fixing a rate of $0.55 per MCF for domestic gas in the City of Laredo retroactive to January 1, 1932, and made said opinion and order and said $0.55 rate immediately operative. June 29, 1933, United Gas Public Service Company filed suit in the District Court of the United States for the [fol. 62] Southern District of Texas, Laredo Division, which suit is styled United Gas Public Service Company v. Lon A. Smith, et al, No. 32 in Equity, and said court, upon the filing of a bond as required by law, issued a temporary restraining order enjoining and restraining the members of the Railroad Commission and the city officials of the City of Laredo from compelling or attempting to compel defendant to observe the Commission's said order and from compelling or attempting to compel defendant to charge the $0.55 rate prescribed in such opinion and order. August 1, 1933, a court of three United States Judges in said cause styled United Gas Public Service Company v. Lon A. Smith, No. 32 in Equity on the docket of the District Court of the United States for the Southern District of Texas, Laredo Division, entered its order enjoining the members of the Railroad Commission and the officials of the City of Laredo

from enforcing or attempting to enforce the Commission's said order and said $0.55 rate until final judgment in this cause. Because of the facts above shown the said $0.75 rate has been in effect in Laredo at all times since 1921 and at all times material to this suit, and such $0.75 rate is now in effect, and the gross revenue received by defendant from domestic gas consumers in Laredo, at all times [fol. 63] herein alleged, have been the gross revenues produced and yielded by said $0.75 rate.

II

The following descriptive terms will sometimes be used herein to have the following meanings:

(a) Existing domestic rate or $0.75 rate to mean the domestic gas rate of $0.75 per MCF., 10% discount for prompt payment of bills, minimum monthly bill $1.00.

(b) Rate deduction ordinance to mean the said ordinance of the City of Laredo effective January 1, 1932.

(c) $0.55 rate to mean the domestic gas rate for Laredo provided in the Commission's order of June 13, 1933, which order is a part of Exhibit "B" of plaintiffs' petition.

(d) City to mean the City of Laredo and its officials.

(e) Company to mean United Gas Public Service Company and its predecessors in title to the natural gas gathering, transmission and distribution property serving gas in Laredo.

(f) Property to mean the natural gas gathering, transmission and distribution property and equipment and [fol. 64] portions thereof used and useful in gathering, transporting and distributing the natural gas furnished by Company in the City of Laredo.

(g) Operating revenues to mean the gross revenues derived by Company from sales of gas in the City of Laredo, exclusive of revenues derived from merchandise sales.

(h) Operating expenses to mean the costs incurred in operating Company's said property, exclusive of any costs of merchandising and jobbing, and exclusive of any charges for reserve for retirements and replacements (depreciation), but including gas at well mouth computed at $0.05

per MCF, as stipulated between the City and Company in the proceedings before the Commission.

(i) Net operating revenue to mean the difference between Laredo operating revenues and operating expenses and also to mean the amount available to provide accruals to reserve for retirement and replacements and return on property value.

(j) The Commission's rate base to mean the amount of $885,000.00 found by the Commission in its opinion of June 13, 1933 to be the present fair value of the Company's property.

[fol. 65] (k) The present fair value of Company's property to mean the value of $1,225,000.00 claimed by Company to be the minimum fair value of its said property during 1932 and the first six months of 1933, but not including any amount for the increase in value of such property since June, 1933.

III

The said $0.55 rate, and the opinion and order of the Railroad Commission purporting to support and promulgate such rate are wholly void and cannot be enforced in this suit because of the following facts:

(a) It appears from the face of such opinion and order that the conclusion of the Commission that the application of such $0.55 rate will produce a net return in excess of seven (7%) per cent per annum on a value of $885,000, after payment of all costs of operation and setting aside three (3%) per cent per annum in a reserve for depreciation, is wholly unsupported by the findings of fact made in such opinion and order. Such conclusion is likewise unsupported by any evidence in the record before the Commission.

(b) In the event it should be found that a proper con-[fol. 66] struction of such opinion and order shows that the Commission fixed said $0.55 rate by the application of the average of revenues and expenses for the four fiscal years 1929, 1930, 1931 and 1932 to a value of $885,000, then such method of determining such rate is unlawful and erroneous and renders such rate unenforceable. Said opinion and order show and the facts as shown by the record

are that gross and net revenues for both the fiscal years 1932 and 1931 were substantially below those in prior years, and that there had been a material change for the worse in business and economic conditions which had caused a serious decline in such revenues. The averaging of the higher gross and net revenues in the fiscal years 1929, 1930 and 1931, with the greatly reduced revenues obtainable and received under business conditions prevailing in 1932, and the use of such four year average as a test for the seven (7%) per cent rate of return fixed by the Commission, necessarily resulted in the fixing of a rate which did not yield seven (7%) per cent for return in 1932, and employed operating results in prior years as a means of imposing confiscatory rates from January 1, 1932. By the use of the proportion between net operating revenues received in the three years prior to 1932 and fair value found at prices [fol. 67] prevailing in 1932, the Commission failed to give any consideration to prices of labor and materials necessary for the reconstruction of defendant's property prevailing in such prior years.

Hence defendant says that said $0.55 rate is unlawful and void and that said opinion and order are unenforceable and should be set aside.

* * * * * * *

VIII

The opinion and order of the Commission made the basis of this suit to enforce said $0.55 rate, and said rate, are each contrary to law and unenforceable by reason of the following facts, and for lack of findings of the Commission from the evidence in the record supporting its action in connection therewith:

* * * * * * *

(b) The Commission, in finding that 3% per annum is a reasonable amount to accrue as a reserve for retirements and replacements (depreciation), has based such finding upon testimony showing that if 2% per annum had been set aside annually from the time the first units of property were installed, the accruals in the reserve would have [fol. 68] equaled charges to the reserve as of the date of the inquiry. The undisputed testimony in the record shows that large amounts of property have been added from year

to year and that a very substantial amount of such property had been installed within the ten years next before the date of the inquiry. This being the state of the evidence in the record before the Commission, the method employed by it in determining a proper annual reserve accrual is arbitrary, capricious and erroneous.

* * * * * * *

VIII

The four fiscal years referred to in the opinion and order made the basis of this suit extend back to July 1, 1928, being the three twelve months periods ended respectively June 30, 1929, June 30, 1930, June 30, 1931 and the twelve months ended July, 1932. Prior to January 1, 1932, defendant sold large quantities of gas to and received substantial revenues from Central Power and Light Company for the use of its electric generating plant in Laredo, and Motor Fuel Products Company for the use of its oil refinery. By 1932, Motor Fuel Products Company had [fol. 69] become insolvent, discontinued operations and has since partly dismantled its plant, and Central Power and Light Company had discontinued operation of its said electric plant except for occasional stand-by and emergency service. For the future, the regular operation of such plant will not be resumed and such plant will be used for stand-by service only, and Laredo is now receiving electric energy from the more modern and efficient plants of said Company located at points other than Laredo on said company's electric transmission system.

The amounts received by the Company from the Central Power and Light Company and Motor Fuel Products Company for gas sold to these two consumers during the four fiscal years above mentioned were as follows:

For Twelve Months Ended	Amount Received From These Two Consumers
June 30, 1929	$68,188.69
June 30, 1930	91,603.56
June 30, 1931	56,415.13
July 31, 1932	15,398.30
Total	$231,605.68

Average per year—$57,901.42.

Subsequent to July 31, 1932, and up to the present time the revenues received from said two consumers have con-
[fol. 70] tinued to decline until at the present time said two consumers have entirely discontinued the purchase and use of gas in Laredo, except in occasional and nominal amounts, and will not resume the purchase of gas in substantial quantities in the future. The amounts received by defend-ant from gas sales to these two consumers for the following periods have been:

For Twelve Months Ended	Amount Received From Said Two Consumers	
October 31, 1932	$12,038.20	
December 31, 1932	8,789.40	
March 31, 1933	4,340.80	
July 31, 1933	2,155.00	
October 31, 1933	51.20	From Central Power & Light Company
December 31, 1933	54.40	From Central Power & Light Company

By averaging gross and net operating revenues for the four fiscal years above set forth, the Commission has not only employed, in fixing said $0.55 rate, defendant's other revenues received in prior periods under conditions which, as found by the Commission, were substantially and materially different from those existing at the time of the in-
[fol. 71] quiry, but has erroneously assumed that gross revenues will be received from the two consumers above named amounting to approximately $58,000 per year in 1932 and subsequent years. As above shown, defendant received from these consumers $8,789.40 in 1932 and $54.40 in 1933, and will receive nothing or only nominal amounts therefrom in the future.

The method thus employed by the Commission in fixing the $0.55 rate is without support in the record and is contrary to law and equity, in that the Commission has employed earnings in prior years in an attempt to sustain and as a means of imposing and enforcing confiscatory rates for 1932 and for the future, and because the Commission has given controlling effect to operating results in prior years which by reason of changed conditions furnish no adequate criterion of the revenues obtained and obtainable during the period said $0.55 rate is made effective; and in that, by applying revenues obtained in prior years and under materially different conditions to fair value

found as of 1932 as a means of determining the percentages available for return and reserve accruals from and after January 1, 1932, the Commission has failed to give proper consideration to the greatly enhanced costs of construction [fol. 72] prevailing in the prior years during which such revenues were earned.

D

IX

The reproduction cost of Company's said property throughout 1932, and during the first six months of 1933, was not less than $1,439,525.00. Due to recent rise in the price of labor and material, said property could not be reproduced at the present time for such amount. The reproduction cost new less depreciation of said property throughout 1932, and the first six months of 1933, was not less than $1,252,828.00. The historical cost of said property exceeds $1,200,000. The present fair value of such property exceeds $1,225,000.00.

At existing rates, including the $0.75 domestic rate, defendant's operating revenues from sales of gas in Laredo and defendant's net operating revenue were, as follows:

Results of Operation at $0.75 Rate

Twelve Months Ended	Operating Revenues	Operating Expenses	Net Operating Revenue
March 1932	$204,821.21	$134,266.51	$70,554.70
[fol. 73] July, 1932	194,524.57	127,414.62	67,109.95
October, 1932	185,970.95	130,716,73	55,254.22
December, 1932	183,777.44	125,001.40	58,776.01
March, 1933	179,792.15	127,676.53	52,115.62
July, 1933	170,370.32	128,252.00	42,118.32
October, 1933	166,002.43	125,052.96	40,949.47
December, 1933	158,753.64	123,040.69	35,712.95

In its opinion and order of June 13, 1933, the Railroad Commission found that three (3%) per cent per annum of the value of Company's property was the proper amount to set aside annually in a reserve for retirements and replacements. The Company denies that such amount is adequate or sufficient. However, if three (3%) per cent be taken as the proper annual accrual for such reserve, the net amounts remaining are as follows:

(a) At existing domestic rates, after deducting from net operating revenue three (3%) per cent of $1,225,000.00, the net amounts remaining for return from Laredo operations for the following periods are:

[fol. 74] At $0.75 Rate

For the 12 Months Ended	Per Cent of $1,225,000.00
March, 1932	2.76%
July, 1932	2.48%
October, 1932	1.51%
December, 1932	1.80%
March, 1933	1.25%
July, 1933	0.44%
October, 1933	0.37%
December, 1933	Deficit of $1,037.05

(b) At existing rates, after deducting from net operating revenues three (3%) per cent of $885,000.00, the net amounts remaining for return from Laredo operations are as follows:

At $0.75 Rate

For the 12 Months Ended	Per Cent of $885,000.00
March, 1932	4.97%
July, 1932	4.58%
October, 1932	3.24%
December, 1932	3.64%
March, 1933	2.89%
[fol. 75] July, 1933	1.76%
October, 1933	1.67%
December, 1933	1.1 %

By reason of the above and foregoing facts, defendant says that the existing $0.75 rate, since February, 1931, has not yielded a reasonable return on the fair value of the defendant's property used and useful to render the service, and does not now yield and produce such a reasonable return. Such $0.75 rate, when sought to be imposed by public authority, is confiscatory. The Railroad Commission and the City of Laredo are without power and lawful authority to compel this defendant to furnish gas and gas service in Laredo at any rate which yields less than a reasonable rate of net return on the fair value of defendant's property, and the action of the Commission, in ordering defendant to

charge said $0.55 rate in Laredo in the future, and put the same into effect retroactively from January 1, 1932, is unlawful and void, and in violation of defendant's rights secured by the Constitutions of the United States and of the State of Texas.

[fol. 76] X

If the said $0.55 rate had been in effect for the seven periods of 12 months each set forth above, the amounts remaining for return, after deducting from net operating revenue three (3%) per cent of $1,225,000.00 would have been as follows:

At $0.55 Rate

For the 12 Months Ended	Per Cent of $1,225,000.00
March, 1932	0.89%
July, 1932	0.63%
October, 1932	Nothing (Deficit equals 0.32%)
December, 1932	Nothing (Deficit equals 0.01%)
March, 1933	Nothing (Deficit equals 0.58%)
July, 1933	Nothing (Deficit equals 1.31%)
October, 1933	Nothing (Deficit equals 1.35%)
December, 1933	Nothing (Deficit equals 1.74%)

At the $0.55 rate, after deducting from net operating revenue three (3%) per cent of $885,000.00, the amounts remaining for return would have been as follows:

[fol. 77] At $0.55 Rate

For the 12 Months Ended	Per Cent of $885,000.00
March, 1932	2.38%
July, 1932	2.03%
October, 1932	0.71%
December, 1932	1.14%
March, 1933	0.35%
July, 1933	Nothing—(Deficit equals 0.66%)
October, 1933	Nothing—(Deficit equals 0.72%)
December, 1933	Nothing—(Deficit equals 1.38%)

By reason of the above facts, the Commission's said order of June 13, 1933 is unlawful and void, and if enforced, will deprive defendant of its property without due process of law, and deny it the equal protection of the laws, contrary to the Fourteenth Amendment to the Federal Constitution and the Bill of Rights of the Constitution of the State of Texas.

XI

As set forth above, defendant in June, 1932, made application to the governing body of the City of Laredo for appropriate action by that body authorizing defendant to [fol. 78] put into effect and thereafter charge and collect in Laredo the following rates for natural gas and natural gas service furnished to domestic consumers:

$1.50 net per month, which $1.50 entitles consumer to use 100 cubic feet of gas during such month;
$0.90 net per M. C. F. for the next 2000 cubic feet of gas used during such month;
$0.70 net per M. C. F. for all additional gas used during such month.
Minimum monthly bill $1.50 net.

The governing body of the City of Laredo refused to grant said application and the Railroad Commission of Texas on appeal in Gas Utilities Docket No. 63 denied such application and instead ordered defendant to charge said $0.55 rate as above set forth.

If the domestic gas rate set forth in Gas Utilities Docket No. 63 and fully described above in this paragraph had been in effect for the twelve months ended December, 1932, and for the twelve months ended December, 1933, defendant's net operating revenue from the sale of gas in Laredo, after deducting therefrom three (3%) per cent of $1,225,- [fol. 79] 000.00, would have been less than seven (7%) per cent of $1,225,000.00 for both said twelve months' periods.

Defendant, therefore, says that the action of the City of Laredo and the Railroad Commission of Texas, in refusing defendant's said application to put into effect said rate above set forth has denied defendant a reasonable rate of net return on the fair value of its property used and useful to furnish said service and has denied defendant just compensation for the use of its said property ever since the date of said application and has resulted in daily confiscation of said property, and has deprived defendant of its constitutional rights guaranteed by the Constitutions of the United States and the State of Texas. In this connection defendant shows that it has done all it could before the legislative and rate making bodies of the State of Texas to get relief and cannot get it, and that the Railroad Com-

mission of Texas is the final legislative and administrative board or commission to which defendant may appeal and no other legislative or administrative board, commission, body or agency of the State of Texas is authorized to supersede the rates fixed by the Commission in its opinion [fol. 80] and order dated June 13, 1933 and to establish fair, reasonable and compensatory rates in lieu thereof.

XII

Defendant, therefore, says that by reason of the above and foregoing facts, the Commission's said opinion and order of June 13, 1933 are void, unenforceable and should be set aside, that said $0.75 rate and said $0.55 rate are each confiscatory and that if defendant is required by public authority to charge either of said rates in the future, or put said $0.55 rate into effect from January 1, 1932 and for the future, defendant will thereby be deprived of its property without due process of law and denied the equal protection of the laws, in violation of the Fourteenth Amendment to the Constitution of the United States, and will be deprived of its property without due course of law, in violation of the Bill of Rights of the Constitution of Texas.

Wherefore, defendant prays that plaintiffs take nothing by their suit; that the injunction sought by plaintiffs be denied, and that defendant go hence without day and re- [fol. 81] cover its costs in this behalf expended.

Mann, Neel & Mann, Ben H. Powell, Baker, Botts, Andrews & Wharton, Attorneys for Defendant, United Gas Public Service Company.

Duly sworn to by J. V. Strange. Jurat omitted in printing.

[File endorsement omitted.]

[fols. 81a–81b] IN DISTRICT COURT OF TRAVIS COUNTY

[Title omitted]

PLAINTIFFS' FIRST SUPPLEMENTAL PETITION—Filed March 6, 1934

To the Honorable Judge of Said Court:

* * * * * * *

[fol. 81c]

V

Answering further, if required, these plaintiffs respectfully submit that on the 18th day of February, A. D. 1909 defendant's predecessors were granted a franchise by the City of Laredo for the construction and operation of a [81-d] natural gas distribution system in the said city, for a period of twenty five (25) years from and after said date; further, that at the time of the granting of the said franchise the City of Laredo had a population of approximately 14,000 inhabitants, and while operating under the terms of the said franchise from the time of its grant in the year 1909 defendant's predecessors furnished natural gas to the domestic, consumers in the City of Laredo at a rate of Fifty cents ($.50) per thousand cubic feet, with a $1.00 per month minimum charge, which rate prevailed until the year 1920.

VI

Further, that in the year 1920, defendant's predecessor, Border Gas Company, petitioned the Mayor and City Council of Laredo for an increase in the schedule of rates for natural gas served to domestic consumers from the then prevailing rate of 50¢ per 1000 cubic feet to 75¢ per 1000 cubic feet, based on its (the Company's) plea that the gas wells serving the City of Laredo, at that time were being swiftly depleted of their supply of natural gas and that it was necessary for the Company to drill additional wells to supplement its supply; further, that the said plea for an increase in rates for domestic consumers to 75¢ per 1000 cubic feet was granted by the Mayor and City Council of Laredo to take effect January 1, 1921, provided that if gas were found in the vicinity of Laredo, supplementing the Company's then supply, that in that event the rates

charged consumers of natural gas in the City of Laredo [fol. 81e] would again be lowered; further, that shortly after the granting of the said increase in rates an ample supply of natural gas became available to the Border Gas Company for serving the City of Laredo, but no reduction as contemplated by the aforesaid order of the City Council was ever made by the said Border Gas Company, and the said rate of 75¢ per 1000 cubic feet with a 10% discount for prompt payment of bills and a minimum bill of $1.00 per user per month prevailed in the City of Laredo from the early part of the year 1921 until the passage of the ordinance of December 15th, 1931, complained of by defendant herein and is the now prevailing rate; further, that since the time of the granting of said franchise the City of Laredo has had a steady and normal growth in population and at the time of the passage by its governing body of the gas reduction ordinance of December 15th, 1931, complained of by defendants, had and has continued to have a population in excess of thirty thousand (30,000) inhabitants.

VII

These plaintiffs would further show that the said Border Gas Company during the year 1909, acquired all rights under the aforesaid franchise granted by the City of Laredo, and during the said year began and completed the construction of a gas transmission line from the "Reiser" gas field (situated approximately 22 miles from the City of Laredo) to the Laredo city gate; and also constructed the gas distribution system serving the City of Laredo, at the end of the said year 1910; further, in the year 1916 the [fol. 81f] said Border Gas Company extended its gas transmission line serving the City of Laredo approximately, 26 miles from the point known as "Pescadito Junction" to what is known as the "Jennings" gas field; and later, in the years 1922 and 1923 an additional 24 miles of transmission line was laid extending from the said "Pescadito Junction" to what is known as the "Carolina-Texas" gas field; further, that from the beginning of the year 1910 until the month of April, 1928, the said Border Gas Company operated the producing, gathering, transmission and distribution properties supplying the natural gas consumed in the City of Laredo. In the month of April, 1928, how-

ever, that portion of the property of the Border Gas Company comprising the distribution system, including all rights and privileges under the aforesaid franchise was acquired by the above mentioned, newly organized Texas Border Gas Company, a Texas corporation; and at that time the portion of the properties of the Border Gas Company comprising the transmission system was acquired by the above mentioned, newly organized South Texas Gas Company; and that portion of the properties of the Border Gas Company comprising the producing gas wells, royalty contracts, oil leases and other production property, as well as the gathering lines and equipment was acquired by the newly organized South Texas Production Company, all units of the United Gas System. Further, from the said month of April, 1928, until the month of October, 1932, the said properties were operated by the said three named corporations (units of the United Gas System); on which latter date, however, a transfer of all of said properties to defendant, United Gas Public Service Corporation, a [fol. 81g] Delaware corporation (a unit of the United Gas System) was effected.

VIII

These plaintiffs would further show that the books and records of defendant's predecessors, Border Gas Company, Texas Border Gas Company and South Texas Gas Company were in the possession of and available to defendant prior to and at the time of the hearing held before the Railroad Commission, but that defendant failed and refused to make use of such records and presented no evidence whatsoever to the commission as to the cost of fixed capital, or as to the historical cost of the properties involved, but, in the submission of its evidence, limited itself to the purely hypothetical reproduction cost new method exclusively, and refused to give any consideration whatsoever to the historical cost of such property.

IX

Further, that although defendant, at the time it presented its evidence before the Railroad Commission in this cause, had available books and records showing the entire history of its operations in the City of Laredo, defendant arbitrarily confined itself to submitting operating statements covering

only the eighteen month period beginning March 31, 1931 [fol. 81h] and ending October 31, 1932, and at this time is confining its allegations as to operations to the limited and abnormal period beginning with the twelve month period ended March 1932 and ending with the twelve month period ended December, 1933, during which period defendant alleges that i-s gross revenue from domestic, commercial and industrial consumption in the City of Laredo has materially declined, and further alleges that the alleged loss in industrial revenue cannot be recouped in the future, when in fact a large per cent of such alleged loss of commercial and industrial revenue is due to the arbitrary and capricious methods pursued by defendant and its predecessor, Texas Border Gas Company; further, that defendant, in prosecuting its appeal before the Railroad Commission in this cause adduced no evidence whatsoever as to such alleged decline in revenue from industrial users, although such facts, if resulting in a decrease in industrial revenue as alleged by defendant, were available to and known by defendant prior to and at the time of the said hearing in this cause before the Railroad Commission; further that the defendant is at this time failing and refusing, as it has failed and refused in presenting its evidence before the Railroad Commission, to set forth its operating returns over a period of time sufficiently large to embrace the good as well as the lean years of its operations in the City of Laredo.

X

Further, that the earnings of the defendant and its prede- [fol. 81i] cessors, Texas Border Gas Company, and South Texas Gas Company, as reflected in the period representing the corporate life of the said two companies from April, 1928, to August 1, 1932, as presented by plaintiff, City of Laredo, in its evidence before the Railroad Commission in the said hearing, and considered by the said Commission in arriving at the 55 cent domestic rate set forth in its order of June 13th, 1933, do not, nor do subsequent operations disclose that the said rate is either unreasonable to defendant or confiscatory of its property; further, the said domestic rate of 55¢ per 1000 cubic feet, as ordered by the Railroad Commission is not only reasonable and non-confiscatory, but the value of the service rendered by defendant in furnishing natural gas and natural gas service to the domestic rate

payers in the City of Laredo on January 1, 1932, and at all times thereafter has not been and is not now in excess of fifty-five cents (55¢) per 1000 cubic feet.

XI

Further, that the said fifty-five (55¢) cent rate which defendant alleges to be confiscatory of its property has not in fact been put into effect and has had no trial or test for any period of time within which to ascertain the amount of revenue that it is capable of producing; and further, in the absence of such test period, these plaintiffs would show; that a decrease in the rate from seventy-five (75¢) cents per 1000 cubic feet to fifty-five (55¢) cents per thousand cubic feet to domestic consumers in the City of Laredo, and the [fol. 81j] substitution of a reasonable, instead of the arbitrary method heretofore and now pursued by defendant in the City of Laredo, in its charges to commercial and industrial and prospective commercial and industrial consumers of natural gas in the said City, and in the territory immediately adjoining said City, would result in increased revenue from the sale of said gas to such consumers and prospective consumers; further, that in the absence of a fair trial or test period showing the actual results of operations under the said fifty-five (55¢) cent rate, defendant's allegation of the unreasonable and confiscatory character of said rate is purely speculative and furnished no sufficient basis, either in law or in fact, upon which a Court or jury in this cause could predicate a finding of unreasonableness to defendant or of confiscation of its property.

Wherefore, these plaintiffs pray that the relief prayed for by defendant in its answer and cross-action be denied; further, that the order of the Railroad Commission herein sued upon be declared valid and subsisting as entered by the Commission; and that these plaintiffs have such other and further relief, in law and in equity, as they may be entitled to and will ever pray.

[fol. 81k] James V. Allred, Attorney General; A. R. Stout, Assistant Attorney General; Hicks, Dickson, Bobbitt & Lange, Robert Lee Bobbitt, Edw. H. Lange, Attorneys for Plaintiffs. Wm. C. Fitzhugh, Assistant Attorney General.

[File endorsement omitted.]

[fol. 81] IN DISTRICT COURT OF TRAVIS COUNTY

[Title omitted]

ORDER OF COURT ON DEMURRERS AND EXCEPTIONS—March 7, 1934

On this, the 7th day of March, A. D. 1934, came on to be heard in the above entitled and numbered cause, the general demurrer and the special exceptions set out in Defendants First Amended Original Answer to the Plaintiff's Original Petition, and the Court after hearing the argument of counsel, is of the opinion that said general demurrer, and special exceptions set out in Defendant's First Amended Original Answer, should be in all things overruled.

It is, Therefore Ordered, Adjudged and Decreed by the Court that the general demurrer and special exceptions contained in paragraph A, sub-numbers 1, 2, 3 and 4, and in paragraph B, sub-numbers 1, 2, 3, 4, 5, 6 and 7 of Defendant's First Amended Original Answer be and the same are hereby overruled.

To which action of the Court in overruling the general demurrer and said special exceptions and each of said special exceptions and the reasons supporting same, the Defendant in open Court then and there excepted, taking its Bill of Exceptions to the action of the Court upon each of said exceptions separately.

And thereupon came on to be heard the general demurrer and special exceptions set out in the Plaintiff's First Supplemental Petition to the Defendant's First Amended Original Answer, and the Plaintiffs, through their attorneys of record thereupon announced in open Court that they desired to waive said exceptions, and upon such announcement, said exceptions were considered and treated by the Court as waived.

And thereupon came on to be heard the general demurrer and special exceptions set out in the Defendant's Replica-[fols. 81m-82-83] tion to the Plaintiff's First Supplemental Petition, and it appearing to the Court that the general demurrer should be overruled, and that all special exceptions therein contained should be sustained.

It is Therefore Ordered and Decreed by the Court that the general demurrer contained in paragraph I of Defend-

ant's Replication to Plaintiff's First Supplemental Petition, be and it is hereby overruled, to which Defendant then and there excepted.

It is Further Ordered by the Court that the special exceptions contained and set out in paragraphs 2, 3, 4, 5, 6, 7, 8, 9 and 10 of Defendant's Replication to Plaintiff's First Supplemental Petition, be and the same are hereby sustained, to which action of the Court as to each exception the Plaintiffs then and there in open Court excepted.

C. A. Wheeler, Judge Presiding.

[fol. 83a] In District Court of Travis County

[Title omitted]

Plaintiffs' Request for Instructed Verdict—Filed March 15, 1934

To Hon. C. A. Wheeler, Judge of Said Court:

Comes now The State of Texas, Railroad Commission of Texas, Miriam A. Ferguson, Governor of Texas, James V. Allred, Attorney General of Texas, City of Laredo and its mayor, city attorney and councilmen, plaintiffs in the above styled and numbered cause, after the defendant United Gas Public Service Company has closed its evidence and rested its case attacking the order of the Railroad Commission of Texas, bearing date of June 13, 1933, and respectfully move the Court to instruct the jury to return the verdict hereinafter set out for the above named plaintiffs and against said defendant, for the reason that the law and facts are with the plaintiffs, and the defendant has wholly failed to make out a case as against said order of the Commission and has not offered such clear and satisfactory proof as to raise an issue or any fact question for the determination by the jury as to whether said order is unjust and unreasonable, said verdict being as follows:

[fol. 83b] IN THE FIFTY-THIRD JUDICIAL DISTRICT COURT, TRAVIS COUNTY

No. 52,774

THE STATE OF TEXAS et al.

vs.

UNITED GAS PUBLIC SERVICE COMPANY

Gentlemen of the Jury:

Under the law, the defendant United Gas Public Service Company has failed to make out a case against the order of the Railroad Commission of Texas bearing date of June 13, 1933, and I, therefore, instruct you to find for the plaintiffs and against the defendant, and that said order is not unreasonable and unjust. Let your verdict be as follows:

"We, the jury find for the plaintiffs and against the defendant United Gas Public Service Company. We further find that the order of the Railroad Commission of Texas bearing date of June 13, 1933, is not unreasonable and unjust.

—— ——, Foreman."

Respectfully submitted, R. L. Bobbitt and Ed Lange, Attorneys for City of Laredo and its Mayor, City Attorney and Councilmen. Wm. C. Fitzhugh and A. R. Stout, Attorneys for State of Texas, Railroad Commission of Texas, Miriam A. Ferguson, Governor and James V. Allred, Attorney General of Texas.

[fol. 83c] ORDER

The above and foreging request for an instructed verdict was duly and seasonably presented to the Court by the attorneys for the record parties plaintiff after the record parties defendant had closed their evidence and rested their case in chief in opposition to and in attack of and against the order of the Railroad Commission of Texas bearing date of June 13, 1933, and the same was by the Court duly considered and was by the Court overruled, to which the record parties plaintiff duly except.

C. A. Wheeler, Judge of the Fifth-Third Judicial District of Texas.

[File endorsement omitted.]

[fol. 83d] IN DISTRICT COURT OF TRAVIS COUNTY

[Title omitted]

MOTION OF DEFENDANT TO DISCHARGE JURY—Filed April 5, 1934

To the Honorable Judge of Said Court:

Comes now the defendant United Gas Public Service Company in the above entitled and numbered cause at the conclusion of all the testimony herein and after all parties had announced the evidence was closed and on this the 5th day of April, 1934, moves the Court to discharge the jury herein and for cause says:

Plaintiffs herein requested a trial by jury and made the necessary deposit of a jury fee in order to have this case put upon the jury docket.

The constitutional and statutory provisions of the laws of Texas relating to trial by jury do not entitle the plaintiffs in this cause to a trial of this case before a jury in that the right of a trial by jury in this character of case did not exist at common law at the time of the adoption of the constitutional provisions of the State Constitution of Texas relating to trial by jury and the right of a trial by jury in this character of case did not exist at common law at the time of the adoption of the statutory provisions of the State of Texas relating to a trial by jury in Texas.

No right of trial by jury under the constitution or statutes of this State exists.

The submission of any issue or of any question to a jury of laymen such as the jury is composed of in this case will probably deprive this defendant of its just rights for [fol. 83e] the reason that much of the evidence is of a highly technical nature and is of such a character that a jury cannot arrive at a just, fair, and correct verdict under the system provided in this state for deliberation and consideration by a jury of its verdict, and the submission of this case or of any question herein to a jury will deprive this defendant of that character of hearing and trial contemplated under the Constitution and laws of the United States and of the Constitution and laws of the State of Texas.

In support of this motion the defendant here now offers to reimburse the Clerk of this Court and here and now

tenders to the Clerk of this Court all expense thus far incurred because of the empannelling of the jury herein and the attendance of the jury at the trial of this cause, the tender being made of those expenses incurred since the jury was selected and empanelled herein and only those expenses incurred because of the selection, empanelling, and attendance of the jury thus far in the trial hereof.

Wherefore, premises considered, defendant prays that the jury be discharged herein and that all questions in this cause be determined by the Court.

Respectfully submitted, Mann, Nell & Mann, Ben H. Powell, Baker, Botts, Andrews & Wharton, by Tom Surry, Attorneys for Defendant.

ORDER

Submitted to the Court at the conclusion of the testimony herein, prior to the submission of any issue to the jury, and said motion is this day overruled by the Court, to which action of the Court, defendant United Gas Public Service Company then and there in open Court excepted:

This the 5th day of April, A. D. 1934.

C. A. Wheeler, Judge.

[fol. 83f] [File endorsement omitted.]

[fol. 83g] IN DISTRICT COURT OF TRAVIS COUNTY

[Title omitted]

MOTION OF THE RECORD PLAINTIFFS FOR AN INSTRUCTED VERDICT AND ORDER OVERRULING SAME—Filed April 5, 1934

To the Honorable C. A. Wheeler, Judge of Said Court:

Now come the State of Texas, et al, record plaintiffs in the above styled and numbered cause, who represent that they are the real defendants in said suit and are only nominal plaintiffs, after all of the evidence in said cause has been closed and after both sides have rested, and respectfully request and move the Court to instruct the jury to return a verdict in their favor and against the defendant, United Gas Public Service Company.

Respectfully submitted, Wm. C. Fitzhugh, Assistant Attorney General; A. R. Stout, Assistant Attorney General; Robert Lee Bobbitt, Ed Lange, Attorneys for the Record Plaintiffs.

[fol. 83h-84-86] ORDER

The above and foregoing motion for an instructed verdict was duly presented to the Court and counsel for the record defendant after both sides had rested and all of the evidence in said cause had been closed and before the reading of the Court's main charge to the jury, and the same was by the Court overruled, to which the Plaintiffs excepted.

C. A. Wheeler, Judge Presiding.

[File endorsement omitted.]

[fol. 87] IN DISTRICT COURT OF TRAVIS COUNTY

[Title omitted]

MOTION OF DEFENDANT FOR INSTRUCTED VERDICT AND ORDER OVERRULING SAME—Filed April 5, 1934

Comes now the defendant United Gas Public Service Company in the above entitled and numbered cause and at the conclusion of all the evidence herein and after all parties herein had announced that the evidence was closed, and prior to the submission of any issue to the jury and here now moves the Court to instruct the jury to return a verdict for the defendant United Gas Public Service Company.

Respectfully submitted (Signature of counsel omitted).

ORDER

The above and foregoing motion for peremptory instruction was submitted to opposing counsel and to the Court on this the 5th day of April, A. D. 1934, prior to the submission of any issue to the jury and said motion is here now overruled by the Court, to which action of the Court the defendant; United Gas Public Service Company, then [fol. 88] and there in open court excepted.

Ordered the 5 day of April, 1934.

C. A. Wheeler, Judge.

[File endorsement omitted.]

[fol. 89] IN DISTRICT COURT OF TRAVIS COUNTY

[Title omitted]

MOTION OF DEFENDANT FOR JUDGMENT DENYING PLAINTIFFS ANY RELIEF ON ORDER OF R. R. COMMISSION FOR THE CALENDAR YEAR 1932 AND ORDER OVERRULING SAME—Filed April 5, 1934

Comes now the defendant United Gas Public Service Company in the above entitled and numbered cause and after all parties herein had announced that the evidence was closed, and after the Court had overruled defendant's motion for peremptory instruction and without waiving said motion for peremptory instruction and now prior to the submission of any issue to the jury, said defendant United Gas Public Service Company moves the Court to render judgment herein denying the plaintiffs any relief upon the order of the Railroad Commission for the calendar year 1932, and refusing the enforcement of said order for the calendar year 1932 because under all the testimony herein most favorable to the plaintiffs it appears that the enforcement of said order for the calendar year 1932 will result in confiscation of defendant United Gas Public Service Company's properties and will result in depriving it of its property without due process of law.

Respectfully submitted (Signature of Defendant's counsel omitted).

[fol. 90] ORDER

Submitted to opposing counsel and the Court on this the 5th day of April, 1934, after the Court has overruled defendant's motion for peremptory instruction and prior to the submission of any issue to the jury, and said motion is here now overruled by the Court to which action of the Court defendant United Gas Public Service Company then and there in open Court excepted.

C. A. Wheeler, Judge.

[File endorsement omitted.]

[fol. 91] IN DISTRICT COURT OF TRAVIS COUNTY

[Title omitted]

DEFENDANT'S MOTION REQUESTING COURT TO RENDER JUDGMENT DENYING PLAINTIFFS ANY RELIEF UPON ORDER OF R. R. COMMISSION FOR YEAR 1933, AND ORDER OVERRULING SAME—Filed April 5, 1934

Comes now the defendant United Gas Public Service Company in the above entitled and numbered cause and after all parties herein had announced that the evidence was closed, and after the Court had overruled defendant's motion for peremptory instruction and without waiving said motion for peremptory instruction, and now prior to the submission of any issue to the jury, said defendant United Gas Public Service Company moves the Court to render judgment herein denying the plaintiffs any relief upon the order of the Railroad Commission for the calendar year 1933, and refusing the enforcement of said order for the calendar year 1933 because under all the testimony herein most favorable to the plaintiffs it appears that the enforcement of said order for the calendar year 1933 will result in confiscation of defendant United Gas Public Service Company's properties and will result in [fol. 92] depriving it of its property without due process of law.

Respectfully submitted (Signature of Defendant's counsel omitted).

ORDER

Submitted to opposing counsel and to the Court on this the 5th day of April, 1934, after the Court has overruled defendant's motion for peremptory instruction and prior to the submission of any issue to the jury, and said motion is here now overruled by the Court to which action of the Court defendant United Gas Public Service Company then and there in open court excepted.

C. A. Wheeler, Judge.

[File endorsement omitted.]

[fol. 92a] IN DISTRICT COURT OF TRAVIS COUNTY

[Title omitted]

MOTION OF DEFENDANT FOR JUDGMENT NON OBSTANTE VERDICTO—Filed April 12, 1934

To the Honorable Judge of Said Court:

* * * * * * *

I

That it would have been proper for the Court to have directed a verdict in this case for the United Gas Public Service Company and therefore under and by virtue of Article 2211, as amended by the 42nd Legislature, United Gas Public Service Company is entitled to a judgment non obstante verdicto.

* * * * * * *

[fol. 92b] IN DISTRICT COURT OF TRAVIS COUNTY

[Title omitted]

PLAINTIFFS' MOTION FOR JUDGMENT—Filed April 24, 1934

Come now the plaintiffs in the above styled and numbered cause, and in addition to their motions for judgment heretofore filed, and without waiving any of them in whole or in part, plaintiffs now respectfully move the Court, said other motions having all been overruled by the Court, that the Court enter judgment in favor of the plaintiff, City of Laredo, Texas, for the use and benefit of the domestic and residential consumers of gas in said City and against the defendant, United Gas Public Service Company, for the difference between the fifty-five cent rate promulgated in the order of the Railroad Commission bearing date of June 13, 1933, and the existing seventy-five cent gas rate now being charged and collected by said defendant, United Gas Public Service Company, and that such judgment and recovery be, become effective, and date from the date, to-wit: August 1st, 1933, when said defendant enjoined the plaintiffs herein from putting into force and effect, or in any

way carrying out, the fifty-five cent rate as prescribed by and in said order of the Railroad Commission of Texas.

James V. Allred, Attorney General; Wm. C. Fitzhugh, Assistant Attorney General; Robert Lee [fol. 92c] Bobbitt, E. R. Lange, Attorneys for Plaintiffs.

ORDER

The above and foregoing motion was duly presented to the Court and adverse counsel prior to the entry of judgment herein, and after having been duly considered by the Court the same was by the Court overruled,

To which action of the Court the plaintiffs duly excepted.

C. A. Wheeler, Judge, Presiding.

[File endorsement omitted.]

[fol. 92d] IN DISTRICT COURT OF TRAVIS COUNTY

[Title omitted]

PLAINTIFFS' MOTION FOR JUDGMENT—Filed April 24, 1934

Come now the plaintiffs in the above styled and numbered cause and respectfully move the Court to enter judgment in their favor and against the defendant, United Gas Public Service Company, upon the verdict of the jury in answer to the Special Issues submitted to them by the Court in this cause.

Respectfully submitted, James V. Allred, Attorney General; Wm. C. Fitzhugh, A. R. Stout, Assistant Attorney General; Robert Lee Bobbitt, E. H. Lange, Attorneys for Plaintiffs.

ORDER

Motion granted this 24th day of April, 1934, Defendants excepts.

C. A. Wheeler, Judge.

[File endorsement omitted.]

[fol. 92e] IN DISTRICT COURT OF TRAVIS COUNTY

[Title omitted]

PLAINTIFF'S BILL OF EXCEPTION No. 1—Filed April 24, 1934

Be it Remembered:

That on the trial of the above and foregoing cause among other proceedings the following were had, to-wit:

In making out their case in chief, in introducing their direct evidence, the plaintiffs duly offered to introduce in evidence the styled appeal and supersedeas bond which was filed with the Railroad Commission of Texas by the defendant's predecessor in title, Texas Border Gas Company, which same is set out in haec verbae as follows, to-wit:

"BEFORE THE RAILROAD COMMISSION OF TEXAS

Gas Utility Docket No. 49

In re the Appeal of TEXAS BORDER GAS COMPANY From an Ordinance of the City of Laredo, Texas

Appeal and Supersedeas Bond

Whereas, Texas Border Gas Company, a corporation, has filed an appeal with the Railroad Commission of Texas from an action by ordinance of the City of Laredo, Texas, in reducing the rates and charges to consumers supplied with natural gas and natural gas service by the Texas Border Gas Company in said City of Laredo; and,

Whereas, by an order of the Railroad Commission of Texas, duly entered, the appeal of said Texas Border Gas Company was allowed and the said ordinance and the rates, [fol. 92f] charges, rules and regulations therein prescribed were suspended and superseded pending final hearing and determination of the said cause on appeal, provided Texas Border Gas Company filed with the Railroad Commission of Texas a properly conditioned bond, with good and sufficient surety;

The condition of this obligation is, that the said principal and surety shall refund and pay to the City of Laredo for the benefit of the consumers in said City any excess of rates or charges collected by the principal, Texas Border Gas Company over and above the rates and charges that shall

be finally determined to be a fair and reasonable return upon the value of its property used and useful in supplying natural gas and natural gas service to the City of Laredo, Texas; otherwise, this obligation shall be null, void and of no further force or effect.

Witness the execution hereof on this 23rd day of December, 1931.

(Signed) Texas Border Gas Company, by F. G. Coates, Attorney. National Surety Company, by Ben H. Powell, Attorney-in-Fact for the Surety Company. (Seal.)"

To the introduction of said above bond and instrument in evidence the defendant, United Gas Public Service Company, objected because the same was immaterial and irrelevant to any issue in this cause, and because it would be prejudicial to said defendant's rights before the jury.

The Court sustained the defendant's objection and ex- [fol. 92g] cluded the introduction of said appeal and supersedeas bond and denied plaintiffs the right to introduce the same in evidence.

To which action of the Court plaintiffs in open Court then and there duly excepted, and here now present such action of the Court for review on appeal as plaintiffs' Bill of Exception No. 1.

ORDER

The above and foregoing plaintiffs' Bill of Exception No. 1 having been examined and considered by the Court, and having been found to be true and correct, is here now allowed and ordered filed as plaintiffs' Bill of Exception No. 1.

C. A. Wheeler, Judge.

Presented and Agreed To. A. R. Stout & Wm. C. Fitzhugh, Robert Lee Bobbitt and E. H. Lange, Attorneys for Plaintiffs State of Texas, et al. Tom Scurry, Attorneys for Defendant, United Gas Public Service Company.

[File endorsement omitted.]

[fol. 92h] IN DISTRICT COURT OF TRAVIS COUNTY

[Title omitted]

MOTION OF DEFENDANT FOR ORIGINAL OF DEFENDANT'S EXHIBIT 13 TO BE SENT UP TO APPELLATE COURT—Filed April 24, 1934

Comes now the defendant United Gas Public Service Company in the above entitled and numbered cause, and represents to the Court that the parties to this suit by their respective attorneys of record have agreed that certain exhibits introduced in evidence during the trial of this case may be sent up in their original forms to the appellate court on appeal hereof and defendant here now moves the Court that it direct that the original of Defendant's Exhibit No. 13 consisting of documents hereinafter set out be sent up to the appellate court as a part of the record in this cause.

The original exhibit requested to be sent up as a part of the record in this cause is Defendant's Exhibit No. 13, [fol. 92i] described in the transcript of evidence as follows:

"Defendant's Exhibit No. 13, consisting of the record, including testimony and exhibits, of the proceedings before the Railroad Commission in the case of the City of Laredo, known as Gas Utilities Docket Nos. 49 and 63, consisting of:

"Book I, of the Transcript of Testimony, being part of the testimony heard in October, 1932; book II of the transcribed testimony, being a part of the testimony heard in October, 1932;

"Book I, of the Transcript of Testimony, being part of the testimony before the Railroad Commission heard November, 1932; Book II of the Transcript of Testimony, being the remainder of the testimony heard before the Railroad Commission in November, 1932;

Company's Exhibits, as follows: Exhibit No. 1, Exhibit No. 2, Exhibit No. 3, Exhibit No. 4, Exhibit No. 4-A, Exhibit No. 5, Exhibit No. 5-A, Exhibit No. 6, Exhibit No. 7, Exhibit No. 8, two instruments both marked Exhibit No. 9, one being a partly handwritten, partly typewritten copy of a contract dated December 31, 1929, between the South Texas Gas Company, seller and Compania Mexicana de Gas; and the other being a photostatic copy of a typewritten contract of three pages, being amendment to a contract be-

tween the South Texas Gas Company and Compania Mexicana de Gas, dated January 23, 1932; Exhibit No. 10, Exhibit No. 11.

[fol. 92j] City of Laredo Exhibits, as follows: Exhibit A, Appraisal, Exhibit A (2), Exhibit B, Exhibit C, Exhibit D, Exhibit E, Exhibit F, Exhibit G, Exhibit H, Exhibit A-Supplemental 1, Exhibit A-Supplemental 2, Exhibit 1 (map), Exhibit J, (map) Exhibit K (map), Exhibit L."

Respectfully submitted, Baker, Botts, Andrews & Wharton, by Tom Scurry, Attorneys for Defendant United Gas Public Service Company.

The plaintiffs, acting by and through their duly authorized attorneys of record, agree that the original of the foregoing exhibit described in the above motion may be sent up as a part of the record in this case in lieu of a transcript of said exhibit described in the foregoing motion, and join in this motion of the defendant United Gas Public Service Company, requesting the Court to direct that the original of said exhibit be sent up as part of the record hereof.

Hicks, Dixon, Bobbitt & Lange, by Edward H. Lange, [fol. 92k] William C. Fitzhugh, Assistant Attorney General; —— ——, Assistant Attorney General, Attorneys for Plaintiffs.

[File endorsement omitted.]

[fol. 921] IN DISTRICT COURT OF TRAVIS COUNTY

[Title omitted]

ORDER SENDING DEFENDANT'S ORIGINAL EXHIBIT No. 13 UP TO APPELLATE COURT—April 25, 1934

It is, Therefore, Ordered, and Directed by the Court that the following instruments constituting Defendant's Exhibit No. 13 introduced upon the trial hereof be sent up to the Appellate Court as a part of the Statement of Facts and record on appeal in this case, to-wit:

[Here follow exhibits itemized as in the hereinabove motion and order signed by the district judge and filed May 4, 1934.]

[fols. 92m-92n] Bond on Appeal for $32,000.00, approved and filed April 26, 1934, omitted in printing.

[fol. 93] IN FIFTY-THIRD DISTRICT COURT, TRAVIS COUNTY, TEXAS

No. 52,774

THE STATE OF TEXAS et al.

v.

UNITED GAS PUBLIC SERVICE COMPANY

Statement of Facts

Before Hon. C. A. Wheeler, Judge, and a Jury.

APPEARANCES

A. R. Stout, Esq., Assistant Attorney General. W. C. Fitzhugh, Esq., Assistant Attorney General, for the State of Texas. R. L. Bobbitt, Esq., Edward H. Lange, Esq., for the City of Laredo.

Frank G. Coates, Esq., Tom Scurry, Esq., John Bullington, Esq., of Baker, Botts, Andrews & Wharton, Houston, Texas; C. B. Neel, Esq., Ben H. Powell, Esq., for United Gas Public Service Company.

[fol. 94] Plaintiffs' Testimony

C. F. PETET, a witness for Plaintiffs, having been duly sworn, testified as follows:

Direct examination.

Questions by Mr. Lange:

Q. State your name.
A. C. F. Petet.

* * * * * * *

Q. What is your occupation at this time?
A. Secretary of the Railroad Commission of Texas.

* * * * * * *

Mr. Lange: This is a certified copy of the Railroad Commission's order of June 13, 1933. I want the witness to identify it.

Q. Is that instrument that you hold a certified copy of the Railroad Commission's order entered in the case to which it refers?

A. Yes, sir.

* * * * * * *

(Thereupon the copy of the opinion and order was offered in evidence by the plaintiffs and marked Plaintiffs' Exhibit No. 3. This exhibit is a duplicate of the copy of the Railroad Commission's opinion and order of June 13, 1933, which was attached to plaintiffs' original petition as Exhibit B thereof, which opinion and order appear at side folios 18-48 of this transcript.)

[fol. 95] STIPULATION AS TO RATE IN EFFECT

* * * * * * *

Mr. Lange: Now, if the Court please, we desire at this time to stipulate for the purpose of the record that the 55-cent rate provided for in this order has never been put into effect and is not now in effect.

Mr. Coates: That is true, and the plaintiff need not introduce any evidence that the 55-cent rate has not been put into effect, because it is a fact that it has not been.

Mr. Stout: And that the 75-cent rate is still being charged and collected from the consumers in the City of Laredo.

* * * * * * *

Mr. Lange: The plaintiff rests.

DEFENDANT'S MOTION FOR INSTRUCTED VERDICT

Mr. Coates: Comes now the defendant United Gas Public Service Company, and upon the conclusion of plaintiffs' testimony, and after the plaintiff has rested, moves the Court to instruct the jury to return a verdict against the plaintiffs herein and for the defendant United Gas Public Service Company.

(Motion overruled, defendant's exception noted.)

[fol. 96] Defendant's Testimony

HENRY BECK, a witness for defendant, having been duly sworn, testified as follows:

Direct examination.

Questions by Mr. Coates:

Q. Please state your name.
A. Henry Beck.
Q. What is your business, Mr. Beck?
A. I am Chief Reporter for the Railroad Commission.

* * * * * * *

Q. Mr. Beck, were you Chief Reporter for the Railroad Commission in October and November, 1932?
A. Yes, sir.
Q. During those two months did you report the testimony and likewise all stipulations and agreements set forth in the hearing before the Railroad Commission in connection with the Laredo case?
A. Yes, sir.
Q. Did you correctly so report those proceedings?
A. Yes, sir.

* * * * * * *

Q. Do you hold in your hand a transcript of such testimony, Mr. Beck?
[fol. 97] A. A good part of it. I don't think it is complete.
Q. But such part as you hold is a part of the transcript of the testimony in that hearing?
A. Yes, sir.
Q. Will you kindly read into the record here a stipulation contained on pages 213 and 214 of that record?

(Plaintiffs object to stipulation as to 5-cent well head price. Court rules that proof competent to show that stipulation made and that the Commission's order was based upon the stipulation, but declines to hold that stipulation binding upon plaintiffs in this trial.)

STIPULATION BEFORE COMMISSION AS TO 5-CENT WELL HEAD PRICE

* * * * * * *

A. This is statement by Mr. Coates: "The City of Laredo and ourselves have reached an agreement on one thing, and as preliminary to the stipulation I am about to enter into the record, I will state the purpose of it; the utilities companies in this case have not inventoried and appraised the production properties, including the wells, which are used and useful to serve gas to the City of Laredo, but instead, and in order to simplify the matter as much as possible, have used a price of 5 cents per thousand cubic feet for gas at the mouth of the well; in the accounting figures for the South Texas Gas Company, the purchase price is computed at 5 cents per thousand cubic feet, and that is shown as the cost or the purchase price [fol. 98] of gas in the accounting exhibits that are still to be introduced. It has been agreed and stipulated between Texas Border Gas Company and South Texas Gas Company that for the purposes of this case and all purposes of this case, the fair prevailing market price, and the fair worth of gas in the Laredo area at the mouth of the wells is 5 cents per M. C. F."

Mr. Bobbitt: That is correct, but that does not mean, of course, that there is not plenty of gas available that could be acquired at a lower price.

Mr. Coates: No, and it does not mean there is not some gas that would cost you more, but for the purposes of this case, and for the purpose of fixing the price of gas to start with, it is stipulated that the fair prevailing price shall be treated in this case for the purpose of fixing rates, and finding a net return, and a net rate of return, and so forth, at 5 cents per thousand cubic feet at the mouth of the well.

Mr. Bobbitt: That is correct.

Commissioner Thompson: That will mean that we will not be given the burden of figuring reserves and depletion [fol. 99] and so on; we are very glad to have this stipulation. It saves us lots of study."

* * * * * * *

H. E. Womack, a witness for the defendant, having been duly sworn, testified as follows:

Direct examination.

Questions by Mr. Coates:

Q. Please state your name to the jury.

A. H. E. Womack.

Q. What is your profession, Mr. Womack, if you have any?

A. I am an accountant for the United Gas Public Service Company.

* * * * * * *

Q. Are you a Certified Public Accountant?

A. I have a certificate as a Certified Public Accountant in Oklahoma.

Q. Now, Mr. Womack, for the purpose of testifying in this case have you made an examination of any particular accounting records?

A. Yes.

Q. What do those accounting records consist of, generally speaking?

A. Generally speaking, they consist of ledgers, vouchers, and various records that one would naturally find in any [fol. 100] sort of business.

Q. And to whom do those records, ledgers and vouchers belong?

A. The South Texas Gas Company, The Texas Border Gas Company, and the United Gas Public Service Company.

* * * * * * *

Q. Please state to the Court and jury the method by which the same are kept.

A. They are kept in the regular order of business by an acknowledged and used classification of accounts, and one generally in use by gas companies in the United States.

Q. Please state whether or not the classification of accounts so employed is based on any nationally known and prescribed classification.

A. Yes, it is based on a standard classification employed by most of the gas companies in the United States.

Q. And is it based on any classification prescribed by any particular association?

A. Yes, the American Gas Association prescribes that classification; also the Association of Railroad and Utility Commissioners prescribes it.

Q. Are you referring to the National Association of Railway and Public Utility Commissioners?

[fol. 101] A. Yes, I am.

* * * * * * *

Q. Mr. Womack, do you know whether any audit is made of such books, records, and accounts?

A. Yes, there is an audit made of those three gas companies' accounts that I mentioned, at least once a year by a responsible firm of auditors, in no way connected with any of these three companies.

Q. And do you know what constitutes the basis for all reports of these companies to United States, State and other governmental authorities.

A. Yes, these particular records about which I spoke, they are the basis for all reports made by these companies to the Federal Government, the State, and other governmental authorities.

Q. State whether or not these accounts to which you refer are the ordinary books of account kept in the usual course of the business of these companies.

A. Yes, they are.

Q. State whether or not they correctly reflect the transactions, the business transactions and accounting matters to which they relate.

A. Yes, they do correctly reflect those particular matters.

[fol. 102]

* * * * * * *

Q. What calendar year does your first operating statement cover?

A. The calendar year 1932.

Q. Have you prepared such an operating statement in written form, for the purpose of introducing the same in evidence as an exhibit?

A. I have.

* * * * * * *

Q. Mr. Womack, referring to Defendant's Exhibit 1, what does the cover sheet show?

A. United Gas Public Service Company, Laredo, Texas. Operating Statement, twelve months ended December 31, 1932. Exhibit 1.

Mr. Coates: We offer this operating statement in evidence, and ask that the same be marked Defendant's Exhibit 1, for identification.

(No objection.)

(Thereupon, the operating statement above referred to marked Defendant's Exhibit 1 was offered in evidence. The same is copied into this transcript upon the pages next following.)

[fol. 103] DEFENDANT'S EX. 1

Page 1

United Gas Public Service Company

City of Laredo—Operating Statement

Twelve Months Ended December 31, 1932

Operating Revenues:	
Sale of Natural Gas	
Residential Sales	$119,489.41
Commercial Sales	34,899.13
Industrial Sales	16,240.83
Government and Municipal Sales	2,622.34
Public Utility—For Fuel Sales	8,790.20
Reconnect Charges	1,735.50
Total Operating Revenues	$183,777.41
Operating Expenses:	
Production Expenses	$24,779.16
Transmission Expenses	12,441.58
Distribution Expenses	17,239.84
Utilization Expenses	415.09
Customers Expenses	14,584.27
New Business Expenses	5,212.81
General Expenses	36,621.79
Taxes	13,706.86
Total Operating Expenses	$125,001.40
Net Operating Revenue	$58,776.01

DEFENDANT'S Ex. 1—Continued

[fol. 104] Page 2

United Gas Public Service Company

City of Laredo—Detailed Operating Expenses

Twelve Months Ended December 31, 1932

Production:	
Gas Purchased	$20,779.95
Purchased Gas Expenses	4,143.27
Gas Used in Company Operations	144.06
Total Production Expenses	$24,779.16
Transmission:	
Pipe Line Rentals	2,907.66
Superintendence and Operating Labor	1,279.95
Operating Supplies and Expenses	817.61
Measurement—Superintendence and Operating Labor	349.57
Measurement — Operating Supplies and Expenses	367.75
Dispatching — Superintendence and Operating Labor	2,576.32
Dispatching — Operating Supplies and Expenses	76.74
Maintenance of Structures—Pipe line	63.27
Maintenance of Structures—Measurement	167.29
Maintenance of Lines and Equipment — Pipe Line	3,670.52
Maintenance of Equipment—Measurement	164.90
Total Transmission	$12,441.58

DEFENDANT'S EX. 1—Continued

[fol. 105] Page 3

United Gas Public Service Company

City of Laredo—Detailed Operating Expenses

Twelve Months Ended December 31, 1932

Distribution:

Superintendence	$2,979.15
Operation of Distribution Mains	383.05
Operation of Services	65.13
Removing and Resetting Meters and House Regulators	1,727.03
Operation of Meter Department	591.63
Other Supplies and Expenses	4,050.93
Maintenance of Structures	214.01
Maintenance of Distribution Mains	3,273.12
Maintenance of Services	944.78
Maintenance of Meters and Regulators	2,926.53
Maintenance of Gas Receivers and District Regulators	38.72
Maintenance of Other Equipment	45.76
Total Distribution Expenses	$17,239.84

Utilization:

Work on Consumers Installations	$380.74
Maintenance of Consumers Installations	34.35
Total Utilization Expenses	$415.09

Customers:

Uncollectible Accounts	$1,365.78
Customers General Labor	663.19
Customers Bookkeeping	4,570.17
Customers Collection	4,015.44
Meter Reading	2,067.92
Other Customer Supplies and Expenses	1,901.77
Total Customers Expenses	$14,584.27

DEFENDANT'S EX. 1—Continued

[fol. 106] Page 4

United Gas Public Service Company

City of Laredo—Detailed Operating Expenses

Twelve Months Ended December 31, 1932

New Business:

Rentals	$122.80
Advertising	2,483.12
Sales and New Business Management and Salesmen's Salaries and Expenses	2,224.34
Piping and Appliances (Gratuitous)	18.13
Other New Business Expenses	364.42
Total New Business Expenses	$5,212.81

General:

Administrative and Other Office Salaries	$15,958.83
Office Supplies and Expenses	1,352.87
Stationery and Printing	153.24
Telephone and Telegraph	580.23
Traveling Expenses	1,565.77
Rentals	1,297.50
Purchase and Stores Expenses	605.23
Law Expenses	1,710.75
Insurance	1,080.27
Supervision and Consultation	2,044.68
Injuries and Damages	219.32
Audit Fees	403.35
Maintenance of General Structures	614.53
Miscellaneous	9,035.22
Total General Expenses	$36,621.79

DEFENDANT'S EX. 1—Continued

[fol. 107] Page 5

United Gas Public Service Company

City of Laredo—Detailed Operating Expenses

Twelve Months Ended December 31, 1932

Taxes:

Ad Valorem	
Independent School District	$45.13
City	5,885.06
County and State	4,149.88
Gross Receipts	
Railroad Commission	629.99
State Comptroller	1,823.34
Franchise	
Delaware	444.51
Texas	591.66
Auto License	32.74
Federal Tax on Checks	21.58
Federal Bond Coupon Tax	82.97
Total Taxes	$13,706.86

[fol. 108] Q. Now, will you make an explanation first of the physical arrangement of the matters contained in Defendant's Exhibit 1, and then of the substance and accounting figures contained in this exhibit?

A. Page 1 shows the operating revenues within the City of Laredo, and the operating expenses, and the difference or net operating revenue for the calendar year 1932. Pages 2, 3, 4, and 5 elaborate on the operating expenses; they break them down into sub-accounts from general heads as shown on page 1.

Q. Is that, the material contained on pages 2, 3, 4, and 5 of Defendant's Exhibit No. 1 of the accounts, normally referred to as a breakdown of operating expense accounts?

A. It is. It is also what the average person would consider explanatory of what is shown on page 1, under operating expenses.

Q. By what term do you customarily refer to page 1 of Defendant's Exhibit 1?

A. It is an operating statement.

Q. But that particular page, Mr. Womack. Well, to refresh your memory, is that what you in your testimony will probably refer to as a summary sheet?

[fol.109] A. Yes; yes, it is a summary sheet.

Q. Well, will you give an explanation of the figures shown on the summary sheet, being page 1 of Defendant's Exhibit 1?

A. Under operating revenues are included the sales of gas and reconnect charges within the City of Laredo, which consist of all the revenues within the City, with the exception of any revenues derived from merchandising and jobbing, for the year 1932. These revenues are classified as to type of customers that the company has, and they are so divided as between the sales made to these various types of customers.

Q. Please state what that classification of customers is—that is, stating the different classifications?

A. The classification of customers is divided as among residential, commercial, industrial, governmental, and municipal, and public utility—for fuel.

Q. Now, will you state the total operating revenues for the twelve months ended December 31, 1932, as reflected by Defendant's Exhibit No. 1?

A. $183,777.41.

Q. Please make a similar explanation of the item Operating Expenses, as reflected on this summary sheet.

[fol. 110] A. The operating expenses are divided into general classes,—the division here being production, transmission, distribution, utilization, customers, new business, general, and taxes.

Q. And please state the total amount of operating expenses reflected by page 1 of Defendant's Exhibit 1, Mr. Womack.

A. The total operating expenses as shown in Exhibit 1 amount to $125,001.40.

Q. Mr. Womack, will you please state whether the operating expenses reflected on page 1 of Defendant's Exhibit 1 contain and set forth any charge for a reserve accrual for retirements and replacements or depreciation?

A. They do not. These expenses are those costs of operation attributable to this particular calendar year.

* * * * * * *

Q. Now, are these general expenses all incurred in Laredo, and for payrolls, rents, and so forth in Laredo?

A. No, they are not.

Q. Well, what explanation have you to give, based on the accounts that you have examined and the business transactions which these accounts reflect, of this item of [fol. 111] general expenses?

A. It is the policy of these companies to have central points from which they operate and from which they have determined that certain operations can be more economically worked. Now these expenses contain a part of such of those operations from those central points as are attributable to and from which Laredo derives benefit. Some of these expenses are incurred in Laredo, so far as that is concerned.

. . . . . .

Q. Do you know the local manager at Laredo?

A. The company has a district manager located in Loredo.

Q. What is his name?

A. W. W. Stine.

Q. Are you familiar with the accounts which record, for instance, his salary and expenses?

A. I am.

Q. From the records you have examined and likewise from your knowledge of the company's operations, do you know whether Mr. Stine, in his capacity as local manager, confines his activities to Laredo, or to Laredo and other points?

[fol. 112] A. I know he does not confine his activities to Laredo only. I spoke while ago of the central points; that is one of them. His duties are not confined only to Laredo, but to other points in what the company calls the Laredo District as well, and part of his salary is attributable to and charged to those other towns in so far as these statements are concerned.

Q. To give the court and jury a general idea of these other towns can you state in what part of the State of Texas they are located?

A. Well, they are located in the southern part.

Q. And where, with reference to the City of Laredo itself?

A. Well, they are located nearby to the City of Laredo.

Q. Name some of these towns, if you recall them.

A. Aguilares, Oilton, Bruni, Roma, Mirando City and Hebbronville.

Q. Now, under what general expense account description does this local manager's salary and expenses appear in Defendant's Exhibit No. 1?

A. The principal part of his salary and expenses is included in this section, general expenses.

Q. And are his salary and expenses carried on a central operating point payroll?

[fol. 113] A. They are. I do not believe I made my answer clear just now: The principal part of such expenses as are attributable to the City of Laredo are included here in general expense.

Q. And is there any proration of his salary and expense between Laredo and the other towns, where he supervises the operations?

A. Yes, there is.

* * * * * * *

Q. Well, look at page 4 of Defendant's Exhibit No. 1; look at the item Insurance. Do you know from your examination of the books, records, and accounts of the Company and also from your knowledge of the Company's operations, how the item of insurance, both fire, workmen's compensation and all other characters of insurance, are handled for these various companies?

A. Yes, I do.

Q. Can you give a brief description of the way that is handled?

A. Yes. It is handled from a central point—the insurance activities, that is. This Insurance Department, I will term it, is available to and is used by all of the towns as well [fol. 114] as including Laredo, and it takes care of the insurance and sees that the rates are not too high and assists and saves the Company money by reason of its knowledge of insurance that the average layman would not have.

Q. Do you know what the sub-departments of that insurance department are?

A. Insurance is principally subdivided as between fire insurance, which is, I would say, the principal part of it.

Q. And what about workmen's compensation insurance?

A. Workmen's compensation insurance is one part of it;

there are a number of forms of insurance the company does carry.

Q. Do you know whether this insurance department likewise covers and includes the claims department?

A. Yes, it does.

Q. Does it likewise include and cover the safety department?

A. Yes, it does.

Q. What relation does the safety department have to do with the amount of insurance premiums paid?

A. If there are very few accidents, the premiums paid are [fol. 115] reduced and it is the function of, shall I say the insurance and safety department, to see that those accidents are held to a minimum, and that does reduce not only the cost of the insurance, but possibly saves the lives of persons.

Q. Now what explanation or differentiation would you give, Mr. Womack, with respect to the accounting done at Laredo and the accounting done at a central operating point?

A. The accounting done at Laredo is that accounting necessary to carry on the customers' accounts, to do the billing for the customers and collecting the customers' accounts, the keeping up with the stores and the materials and supplies in that district.

Q. Now, those primary accounts; what has any central operating point got to do with them and what does it do with them?

A. The central operating point compiles from those accounts, and carries, additional accounts to those carried there in Laredo. It is cheaper that most of the accounting be done in a central point than in each individual town.

Q. Now, under what subdivision of operating expense here does the central operating point accounting expense appear?

[fol. 116] A. It appears under administrative and other office salaries.

Q. And under what general heading is that carried, as reflected by this exhibit?

A. Under general expense; that is the only place it is carried—general expense.

Q. Now, Mr. Womack, I have asked you this question but I am not sure of it: Have you ascertained from your examination of the books, records, and accounts of United Gas Public Service Company and its predecessor companies,

whether the accounts reflected under the heading General Expense, reflect the cost of operations which are duplications of operations causing the other forms and description of operating expenses contained in Defendant's Exhibit 1?

A. There are no duplications at all; nothing included in general expense is included elsewhere.

Q. And have you ascertained whether or not the expenses reflected under the heading, General Expense, relate to operations which pertain to the business of selling and distributing gas in Laredo and over the system?

A. They do, and such expenses as are not attributable to that have been excluded from this statement.

[fol. 117] Q. And is a prorata of such expenses as are incurred at a central operating point for the benefit of the entire system or a particular part of the system, prorated to each locality benefited thereby?

A. Yes.

Q. And has that proration been made and is it reflected in this operating statement here with respect to Laredo?

A. It is so reflected in Exhibit 1.

* * * * * * *

Q. Mr. Womack, have you prepared an operating statement showing the results of operation in the City of Laredo for any other calendar year, other than the calendar year 1932?

A. I have.

* * * * * * *

Q. Is the operating statement about which I made inquiry reflected by the instrument that I show to you?

A. Yes; it is.

Mr. Coates: We offer this operating statement styled "United Gas Public Service Company, Laredo, Texas, Operating Statement, Twelve Months Ended December 31, 1933", and ask that the same be marked Defendant's Ex-[fol. 118] hibit Number 3 for identification.

(Thereupon, the defendant offered in evidence the statement above referred to, which was marked Defendant's Exhibit Number 3. The same is copied into this transcript upon the pages next following:)

[fol. 119] DEFENDANT'S EX. 3

Page 1

United Gas Public Service Company

City of Laredo—Operating Statement

Twelve Months Ended December 31, 1933

Operating Revenues:	
Sale of Natural Gas	
Residential Sales	$110,686.26
Commercial Sales	25,914.25
Industrial Sales	18,404.20
Government and Municipal Sales	2,071.53
Public Utility—For Fuel Sales	54.40
Reconnect Charges	1,623.00
Total Operating Revenues	$158,753.64
Operating Expenses:	
Production Expenses	$21,111.61
Transmission Expenses	10,131.28
Distribution Expenses	13,978.32
Utilization Expenses	7.91
Customers Expenses	14,136.54
New Business Expenses	6,077.61
General Expenses	39,456.00
Taxes	14,921.77
Total Operating Expenses	$119,821.04
Net Operating Revenue	$38,932.60

Defendant's Ex. 3—Continued

[fol. 120] Page 2

United Gas Public Service Company

City of Laredo—Detailed Operating Expenses

Twelve Months Ended December 31, 1933

Production:

Gas Purchased	$17,839.25
Purchased Gas Expenses	3,422.53
Gas Used in Company Operations	150.17
Total Production Expenses	$21,111.61

Transmission:

Pipe Line Rentals	$2,352.90
Superintendence and Operating Labor	1,298.91
Operating Supplies and Expenses	1,032.50
Measurement—Superintendence and Operating Labor	243.48
Measurement—Operating Supplies and Expenses	277.28
Dispatching Superintendence and Operating Labor	1,524.55
Dispatching—Operating Supplies and Expenses	62.29
Maintenance of Structures—Pipe Line	139.34
Maintenance of Structures—Measurement	382.71
Maintenance of Lines and Equipment—Pipe Line	2,608.60
Maintenance of Equipment—Measurement	208.72
Total Transmission Expenses	$10,131.28

Defendant's Ex. 3—Continued

[fol. 121] Page 3

United Gas Public Service Company

City of Laredo—Detailed Operating Expenses

Twelve Months Ended December 31, 1933

Distribution:	
Superintendence	$2,093.59
Operation of Distribution Mains	541.88
Operation of Services	138.67
Removing and Resetting Meters and House Regulators	2,301.13
Operation of Meter Department	338.48
Other Supplies and Expenses	3,168.60
Gratuitous Servicing of Installations Owned by Customers	1,140.71
Maintenance of Structures	772.51
Maintenance of Distribution Mains	683.90
Maintenance of Services	420.69
Maintenance of Meters and Regulators	2,302.43
Maintenance of Gas Receiving and District Regulators	44.25
Maintenance of Other Equipment	31.48
Total Distribution Expenses	13,978.32
Utilization:	
Work on Customers Installations	$2.41
Maintenance of Customers Installations	5.50
Total Utilization Expenses	$7.91
Customers:	
Uncollectible Accounts	$1,904.85
Customers General Labor	3,494.08
Customers Bookkeeping	3,232.07
Customers Collecting	2,453.20
Meter Reading	1,723.65
Other Customers Supplies and Expenses	1,328.69
Total Customers Expenses	$14,136.54

6—13

Defendant's Ex. 3—Continued

[fol. 122] Page 4

United Gas Public Service Company

City of Laredo—Detailed Operating Expenses

Twelve Months Ended December 31, 1933

New Business:

Rentals	$287.71
Advertising	2,594.85
Sales and New Business Management and Salesmen's Salaries and Expenses	2,721.08
Other New Business Expenses	473.97
Total New Business Expenses	$6,077.61

General:

Administrative and Other Office Salaries	$16,579.11
Office Supplies and Expenses	2,049.69
Stationery and Printing	149.21
Telephone and Telegraph	972.52
Traveling Expenses	2,899.29
Rentals	1,519.15
Purchase and Stores Expenses	821.21
Law Expenses	4,438.00
Insurance	1,808.60
Supervision and Consultation Fees	2,376.61
Injuries and Damages	600.10
Audit Fees	571.06
Maintenance of General Structures	466.66
Miscellaneous	4,204.79
Total General Expenses	$39,456.00

Defendant's Ex. 3—Continued

[fol. 123] Page 5

United Gas Public Service Company

City of Laredo—Detailed Operating Expenses

Twelve Months Ended December 31, 1933

Taxes:	
Ad Valorem	
Independent School District	$39.10
City	6,030.47
County and State	4,515.11
Gross Receipts	
Railroad Commission	387.16
State Comptroller	1,548.63
Franchise	
Delaware	153.41
Texas	1,626.84
Federal Tax on Checks	55.29
Federal Capital Stock Tax	661.39
Transferred to Merchandise and Jobbing	95.93
Auto License	.30
Total Taxes	$14,921.77

* * * * * * *

[fol. 124] Q. Please read into the record the amount of the total operating revenues derived from sales of gas in Laredo for the twelve months ended December 31, 1933, as reflected by this statement.

A. The operating revenues, which include all revenues within the City of Laredo with the exception of merchandise and jobbing, are $158,753.64.

Q. Now, does page 1 show anything else except operating revenues?

A. It shows operating expenses.

Q. And what is the total amount of those operating expenses?

A. The total amount, exclusive of any cost of merchandise and jobbing, is $119,821.04.

Q. Do the operating expenses include any charges for accrual of a reserve for retirements, replacements, and depreciation?

A. They do not. These are costs incurred.

Q. What is the net operating revenue from these operations, as reflected by this page 1?

A. $38,932.60.

* * * * * * *

[fol. 125] Mr. Coates: We offer this instrument in evidence, and ask that it be marked Defendant's Exhibit No. 5; but as to those operating revenues which relate to prior periods, and particularly the fiscal years 1928, 1929, 1930, 1931, and 1932, it is not to be taken as offering these operating revenues in evidence as the basis for the primary determination of the validity of this fifty-five cent rate, but simply for the purpose of reflecting trends and reflecting the results of taking into account these prior operating periods.

The Court: No Objection.

(Thereupon, the instrument above referred to was marked as Defendant's Exhibit No. 5. The same is copied into this transcript upon the pages next following:)

[fol. 126]

DEFENDANT'S EXHIBIT 5

Comparison of Operating Revenues—Laredo, Texas

12 Months Ended	Total	Residential Sales	Commercial Sales	Industrial Sales	Government and Municipal Sales	Sales to Public Utilities-For Fuel	Reconnect Charges
Mar. 31, 1932.....	$204,821.21	$124,150.26	$36,426.51	$17,564.44	$2,302.28	$22,557.32	$1,820.40
July 31, 1932.....	$194,524.57	$122,888.78	$34,142.37	$17,979.29	$2,256.63	$15,400.10	$1,857.40
Oct. 31, 1932.....	$185,970.95	$119,492.09	$32,527.03	$17,766.25	$2,393.38	$12,038.80	$1,753.40
Dec. 31, 1932.....	$183,777.41	$119,489.41	$34,899.13	$16,240.83	$2,622.34	$8,790.20	$1,735.50
Mar. 31, 1833.....	$179,792.15	$121,490.87	$33,385.93	$16,226.11	$2,611.84	$4,358.40	$1,719.00
July 31, 1933.....	$170,370.32	$115,517.62	$32,097.78	$16,459.82	$2,502.30	$2,183.80	$1,609.00
Oct. 31, 1923.....	$166,002.43	$114,077.08	$31,096.28	$16,625.00	$2,499.87	$51.20	$1,653.00
Dec. 31, 1933.....	$158,753.64	$110,686.26	$25,914.25	$18,404.20	$2,071.53	$54.40	$1,623.00

It will be observed that there has been a continuous downward trend of total revenues derived from sales of gas in the City of Laredo throughout the total period of time covered by the above statement. This downward trend began to manifest itself even prior to this period, but during those earlier years revenues were classified only into two groups, "Domestic" and "Industrial", so that no comparison by classes is possible beyond the period shown here.

The decline in sales of gas for residential use is attributable primarily to the lesser number of customers served due to poorer business conditions in Laredo during the above period as compared with prior years. The year 1933 was also somewhat warmer than the average, resulting in lowered volume of sales of gas for heating in that year as compared to 1932, which was a year in which the average temperature for the heating season was approximately equal to the twenty-five year average for Laredo.

[fol. 127] Poorer business conditions are also responsible for the bulk of the decrease in commercial sales. There have been, however, some reclassifications made of customers in the past year or so, with a general tendency to put some of the customers formerly classified as commercial over into the industrial group.

This reclassification has offset to a considerable extent the decline in industrial sales, particularly in the more recent periods. The apparent increase in industrial sales for the twelve months ended December 31, 1933, is due principally to such reclassification. Until 1931, the Motor Fuel Products Company constituted one of the best industrial customers, but this company's cessation of operations caused a decrease not evident above.

Government and Municipal sales have not changed appreciably.

The sales to the Central Power and Light Company are the only revenues classified as Public Utility-For Fuel sales. Sales to this company declined in the periods shown above to $22,557.32 in the twelve months ended March, 1932, to $8,790.20 in the twelve months ended December, 1932, and to $54.40 in the twelve months ended December, 1933. Of the total decline in operating revenues for the periods shown above, approximately 50% is due to decline in sales to Central Power and Light Company.

[fol. 128] Comparison of Total Operating Revenues—Laredo, Texas

Twelve Months Ended June 30, 1929	$290,705.62
Twelve Months Ended June 30, 1930	$329,592.80
Twelve Months Ended June 30, 1931	$262,992.30
Twelve Months Ended March 31, 1932	$204,821.21
Twelve Months Ended July 31, 1932	$194,524.57
Twelve Months Ended October 31, 1932	$185,970.95
Twelve Months Ended December 31, 1932	$183,777.41
Twelve Months Ended March 31, 1933	$179,792.15
Twelve Months Ended July 31, 1933	$170,370.32
Twelve Months Ended October 31, 1933	$166,002.43
Twelve Months Ended December 31, 1933	$158,753.64

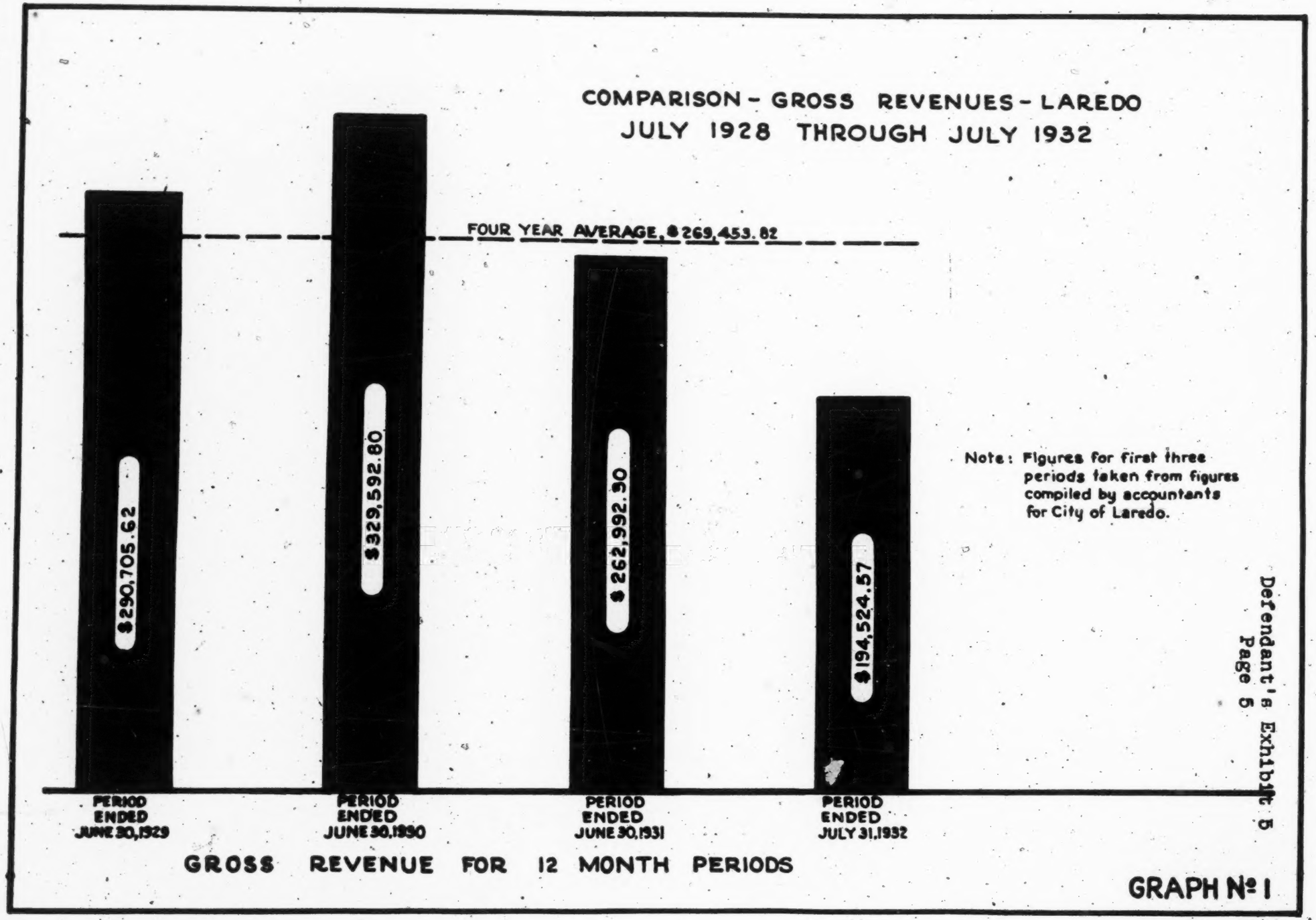
The above comparative statement indicates the trend of revenues in the City of Laredo over the past five and one-half years. The revenues shown for the twelve months ended June, 1929, 1930 and 1931 were compiled by the accountants for the City of Laredo. During those three years the classification of revenues was entirely different to that employed subsequently; the amounts for each period are, therefore, shown only in totals.

Graph 1 reflects graphically the revenues during the first four years covered by the comparative statement. It is to be noted that these revenues include non-recurring revenues from the Motor Fuel Products Company and Central Power and Light Company. The sales to the Motor Fuel Products Company had already ceased by 1932.

[fol. 129] Graph 2 indicates the extent of the decline in revenues over the past five and one-half years, and offers a comparison of the average annual revenues for the first four years, in the amount of $269,453.82, with the average annual revenues for the last two years, in the amount of $171,265.52.

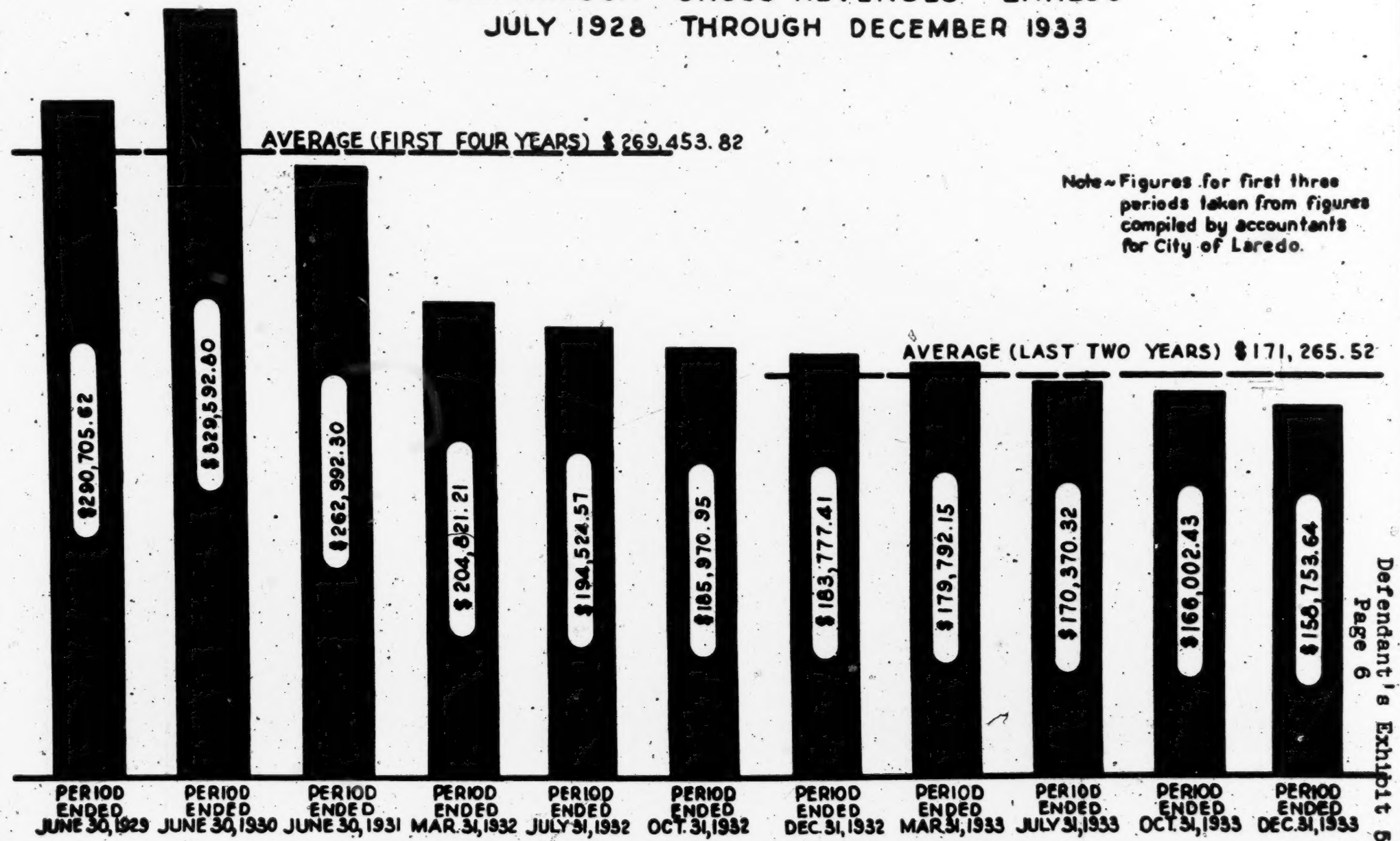
Graph 3 shows the same revenues, but separates the non-recurring from the recurring revennes, and shows also the average annual recurring revenues for the first four fiscal years, and the average annual revenues for the two calendar years 1932 and 1933.

(Here follow three photos, side folios 130, 131 and 132)



Defendant's Exhibit 5
Page 5

COMPARISON - GROSS REVENUES - LAREDO
JULY 1928 THROUGH DECEMBER 1933

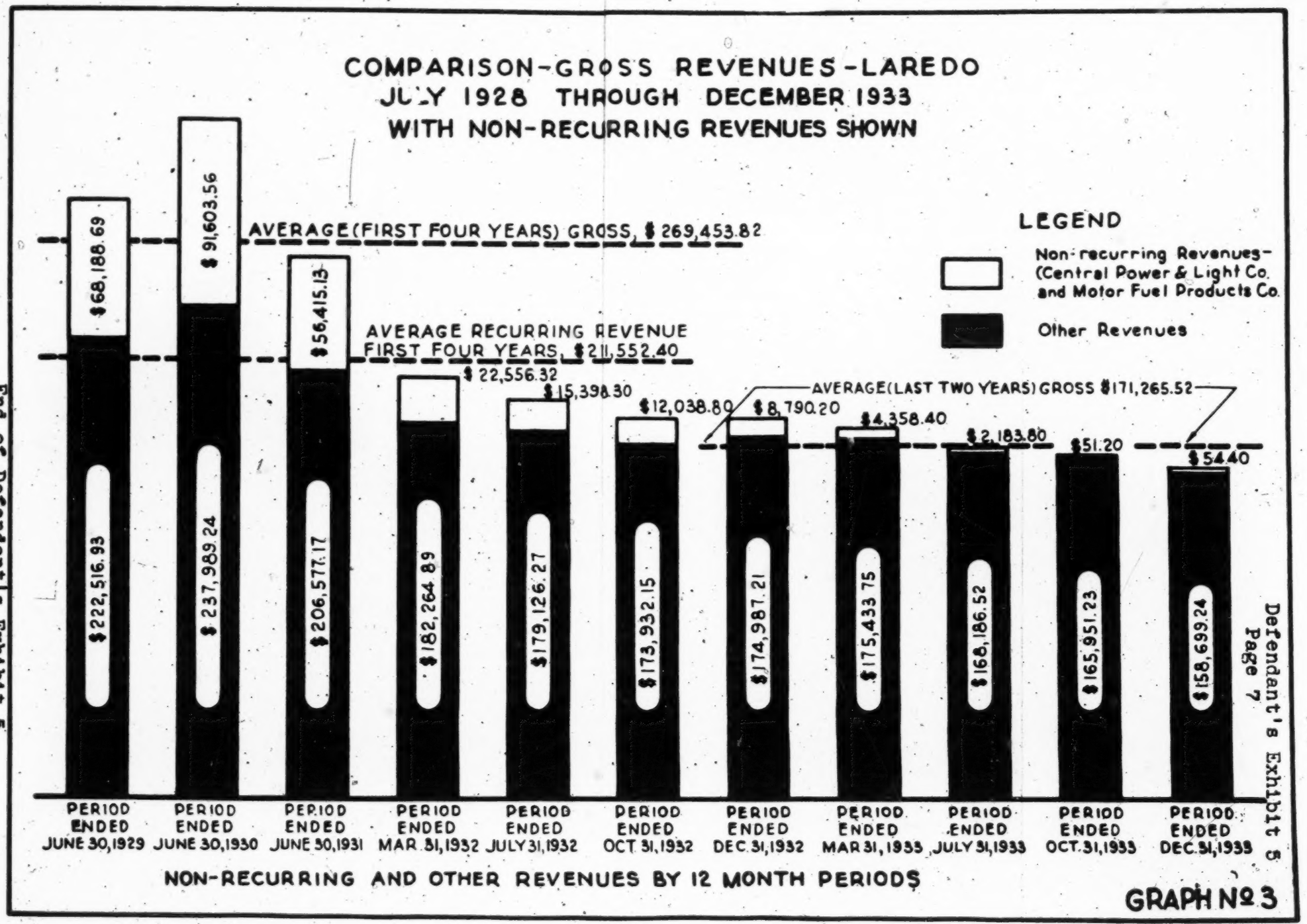


Note ~ Figures for first three periods taken from figures compiled by accountants for City of Laredo.

GROSS REVENUE FOR 12 MONTH PERIODS

GRAPH Nº 2

Defendant's Exhibit 6
Page 6



End of Defendant's Exhibit 5

Defendant's Exhibit 5
Page 7

[fol. 133] Q. Now, from what source did you derive the total operating revenue figures for the twelve months ended June 30, 1929, June 30, 1930, and June 30, 1931, as shown on page 3 of Defendant's Exhibit No. 5?

A. Those figures are copies of the figures compiled by accountants for the City of Laredo.

Q. And introduced in evidence before the Railroad Commission?

A. Yes, that is the way I got these figures.

• • • • • • •

Q. And have you made an analysis for the purpose of determining the gross revenues paid in the past by any particular industrial customer?

A. Yes.

Q. What industrial customer?

A. Central Power & Light Company.

Q. And by what public utility customer?

A. I should have said that Central Power & Light Company is a public utility customer. Industrial customer, Motor Fuel Products Company.

Q. Mr. Womack, for each of the periods reflected by Graph No. 2 of Defendant's Exhibit 5 have you ascertained [fol. 134] the gross amount of revenues paid by Motor Fuel Products Company and Central Light & Power Company in these respective twelve-month periods?

A. Yes, I have.

Q. Please turn to Graph No. 3. Have you caused Graph No. 3 of Defendant's Exhibit 5 to be expanded into the form of a chart?

A. I have.

Q. And have you that chart here in the court room?

A. Yes, it is here.

Q. Is that chart an enlarged representation of Graph No. 3 of Exhibit 5?

A. Yes, it is.

Q. Will you explain this chart to the court and jury?

A. Chart No. 3 shows the same twelve-month periods as Chart No. 2. There is this difference shown in the stacks: There is white for those revenues which are non-recurring—that is, Central Light & Power Company and Motor Fuel Products Company—whereas the second chart showed everything in black. Now, Chart No. 3 shows the average

recurring revenues for the first four years as well as the average of the total gross revenues for those periods.

Q. Take, for example, the stack representing gross rev-
[fol. 135] enues for the period ended June 30, 1929, and refer to the legend shown on Graph No. 3 and likewise on the chart. Now, how do you show the gross revenue from other customers in that period and the gross revenue from Motor Fuel Products Company and Central Light & Power Company and described as non-recurring revenue?

A. I believe you said to take the period ended June 30, 1929?

Q. Yes.

A. In the stack in white is shown the revenue derived from those two companies, Central Light & Power Company and Motor Fuel Products Company. In black is shown the revenue from all other customers during that twelve-month period.

Q. For the period ended June 30, 1929, how may one know the total gross revenues derived from all other customers than Central Light & Power Company and Motor Fuel Products Company?

A. That amount is shown in the white island included in the black part of the stack.

Q. Read the figures showing the revenues for this period about which I am inquiring from all customers other than Motor Fuel Products Company and Central Light & Power Company.

[fol. 136] A. For that period—that is, twelve months ended June 30, 1929—$222,516.93.

Q. Where is that figure shown on Graph No. 3 and the chart which is an enlargement of it?

A. That is shown on the white section included in the black part of the left-hand stack—that is, the left-hand as I face it.

Q. And where on that stack are the revenues shown received from Central Light & Power Company and Motor Fuel Products Company?

A. They are shown in the white portion of the stack.

Q. And what is the amount of those revenues?

A. $68,188.69.

Q. Now, Mr. Womack, without going through each one of those stacks, is there a similar graphic representation and differentiation between these two types of revenues reflected on Graph No. 3 and likewise the chart?

A. Yes, sir.

Q. Take the calendar year 1932 and point out how one may determine from this chart the total amount of gross revenues, the recurring gross revenues, and non-recurring gross revenues as you have used those descriptive [fol. 137] terms.

A. Non-recurring revenues are shown by the white portions of the stack; the other revenues are shown in the island included in the black portion of the stack. The total revenues will be the sum of those two figures.

Q. Read the total gross revenues, the non-recurring and the recurring revenues.

A. Total gross revenues were $183,777.41, of which $8,790.20 was non-recurring and $174,987.21 is termed recurring revenues.

Q. Now, by reference to Graph No. 3 and the chart which is an enlargement of it, make the same character of explanation for the calendar year 1933.

A. The gross revenues for the calendar year 1933 were $158,753.64, of which $54.40 was non-recurring revenue and $158,699.24 was other revenues.

Q. Now, Mr. Womack, what is the generally used and accepted meaning in the gas industry and the public utility industry of the term "non-recurring revenue"?

A. They are such revenues as the utility has received from particular customers in the past but which, due to certain conditions, the company has lost and can not rea- [fol. 138] sonably expect to receive in the future.

Q. And as the term is ordinarily used in the public utility industry and in the gas industry, what is meant by the term "recurring revenue"?

A. They are those revenues derived from sales to customers that are more or less normal from year to year.

Q. How about their recurrence in the future?

A. They are presumed to derive revenue from that type of customer or those customers in the future.

Q. Mr. Womack, have you read the opinion and order of the Railroad Commission dated June 13, 1933, in this case?

A. I have.

Q. Have you prepared in the form of an exhibit the application of certain findings contained in that order for the years 1932 and 1933?

A. I have.

• • • • • • •

Mr. Coates: Well, for purposes of identification, we offer in evidence as an exhibit the instrument styled "United Gas Public Service Company, Application of certain findings of the Railroad Commission to the years 1932 and 1933, [fol. 139] Laredo, Texas", and ask that the same be marked Defendant's Exhibit No. 6, for identification. • • •

(Plaintiffs object, first argue and then withdraw objection.)

• • • • • • • •

Mr. Coates: The Defendant, United Gas Public Service Company, now offers in evidence the instrument identified by Mr. Womack as an application of certain findings of the Railroad Commission in 1932 and 1933, Laredo, Texas, for the purpose of showing the application of the findings set forth in this exhibit to the years 1932 and 1933, and not for the purpose of proving that the value of the property is $885,000.00 nor that the three per cent for reserves or seven per cent for return is a proper amount. That is, we are offering the exhibit to show what it does show on its face.

The Court: • • • Go ahead.

(Thereupon the document above referred to was marked as Defendant's Exhibit No. 6. This exhibit is copied in this transcript on the pages next following:)

[fol. 140] DEFENDANT'S EXHIBIT 6

Application of Certain Findings of the Railroad Commission to 1932 and 1933—Laredo, Texas

The Railroad Commission of Texas, in its order dated June 13, 1933, in G. U. Dockets Nos. 49 and 63, states that "the present fair value of the properties of the company used, and useful in the gathering, transporting and distributing of natural gas within the City of Laredo, Texas, to be in the sum of $885,000." (p. 15). The Commission also states that "we are fixing the annual depreciation rate at 3 per cent, which we consider ample to meet the company's future requirements" (p. 12), and finds "that an annual rate of return equal to seven per cent (7%) of the present fair value of the properties as herein found is adequate" (p. 12).

At existing rates, amounts available for return for the years 1932 and 1933, after deducting 3 per cent of $885,000, are as follows:

Year	Net Revenues After Deducting 3 Per Cent of $885,000	Per Cent of $885,000
1932	$32,226.01	3.64%
1933	$12,382.60	1.40%

The net revenues for these two years, and a comparison of these amounts with the amount required to equal that 7 per cent return found to be adequate by the Commission, are illustrated in the accompanying Graph 4.

[fol. 141] If the rate of 55c net per M. C. F. fixed in the Commission's order had been in effect during the years 1932 and 1933, operating results for such years would have been as follows:

Year	Operating Revenues	Operating Expenses	Net Operating Revenue
1932	$161,637.65	$125,001.40	$36,636.25
1933	$138,256.85	$119,821.04	$18,435.81

At the Commission's 55c rate, as shown above, amounts available for return for the years 1932 and 1933, after deducting 3 per cent of $885,000 for depreciation, would have been as follows:

Year	Net Revenues After Deducting 3 Per Cent of $885,000	Per Cent of $885,000
1932	$10,086.25	1.14%
1933	$ 8,114.19*	.92%*

This result is also illustrated and compared with the Commission's adequate return of 7 per cent on $885,000 by Graph 5.

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* Red in copy.

(Here follow two photos, side folios 142 and 143)

NET AMOUNTS AVAILABLE FOR RETURN ON COMMISSION'S VALUATION AT EXISTING RATES-LAREDO

$80,000.00
$70,000.00
$60,000.00
$50,000.00
$40,000.00
$30,000.00
$20,000.00
$10,000.00

7.0%

$ 61,950.00

7% of Commission's Valuation of $885,000.00 after Deduction of 3% for Reserves.

LEGEND

Amount available for return after deducting 3% of $885,000.00 for Reserves.

3.64 %

$ 32,226.01

1.40 %

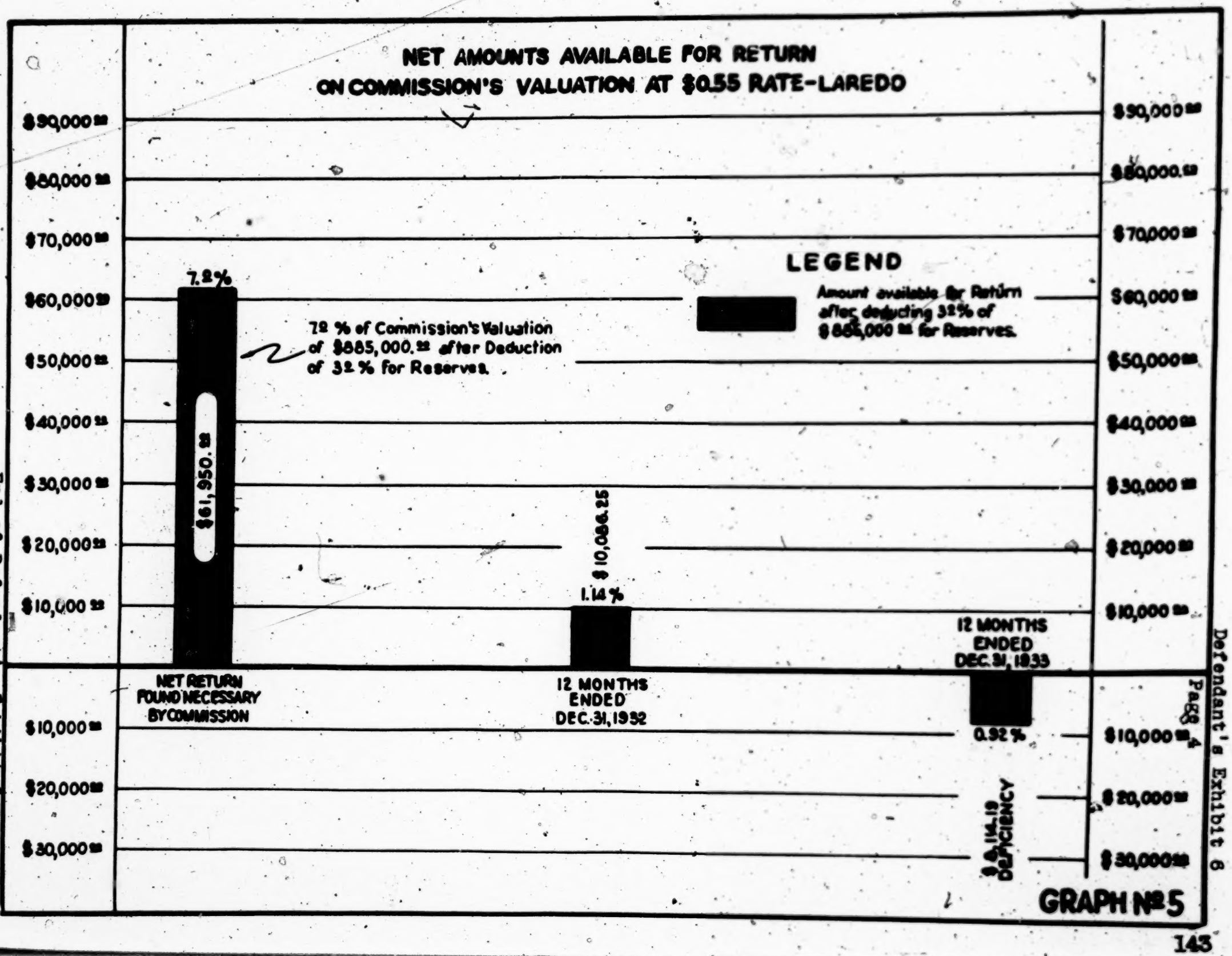
NET RETURN FOUND NECESSARY BY COMMISSION

12 MONTHS ENDED DEC. 31, 1932

12 MONTHS ENDED DEC. 31, 1933

GRAPH No. 4

Defendant's Exhibit 6
Page 3



End of Defendant's Exhibit 6

Defendant's Exhibit 6 Page 4

[fol. 144] Mr. Coates:

Q. Mr. Womack, please refer to page 1 of respondent's Exhibit No. 6. In the second paragraph of page 1 of defendant's Exhibit No. 6 you set forth a tabulation. Now, Mr. Womack, is that an estimate or a calculation?

A. That figure is a calculation.

Q. Please explain to the court and the jury how the calculation was made and on what figures it is based.

Q. This shows the years 1932 and 1933, and shows the net revenues after deducting three per cent of $885,000.00 for the year 1932 to be $32,226.01; for the year 1933 to be $12,382.60. It also shows the per cent that each of those amounts is of $885,000.00; for the year 1932 that per cent is 3.64 and for the year 1933 that per cent is 1.40.

• • • • • • •

A. This figure of $32,226.01 is a mathematical calculation arrived at by deducting the operating expenses from the operating revenues, as shown in defendant's Exhibit No. 1, and from that difference deducting three per cent of $885,000.00.

The Court: Now, to get the matter clear, as I see it, what does the $32,226.01 represent. State that just as [fol. 145] briefly as you can.

A. It represents the amount that the company would have available for return on its investment if the three per cent of the $885,000.00 is considered as correct.

• • • • • • •

Q. Now, in order to make the record entirely clear, Mr. Womack, refer to page 1 of defendant's Exhibit No. 1. Referring to that page, what are the total operating revenues as shown on that page?

A. $183,777.41.

Q. What are the total operating expenses shown on that page?

A. $125,001.40.

Q. What is the difference between operating revenues and operating expenses, or the net operating revenue?

A. $58,776.01.

Q. Now what is three per cent of $885,000.00?

A. $26,550.00.

Q. What is the difference between $58,776.01 and the amount you have stated is three per cent of $885,000.00?

A. $32,226.01.

Q. Where is this figure of $32,226.01 shown in defendant's Exhibit No. 6?

[fol. 146] A. It is shown under the title there "Net Revenues", after deducting three per cent of $885,000.00.

Q. And what per cent of $885,000.00 is $32,226.01?

A. 3.64 per cent.

Q. Mr. Womack, refer to defendant's Exhibit No. 3 and tie the figure shown for the year 1933 in Defendant's Exhibit No. 6 into page 1 of Defendant's Exhibit No. 3 in the same way as you have done for the year 1932.

A. The operating revenues as shown in defendant's Exhibit No. 3 amount to $158,753.64 and the operating expenses as shown in that exhibit amount to $119,821.04. The difference in those two figures or the net operating revenue is $38,932.60. That is all there is in Exhibit 3. Now three per cent of $885,000.00 is $26,550.00; that $26,500.00 deducted from the net operating revenue of $38,932.60 as shown in defendant's Exhibit No. 3 is $12,382.60.

Q. And what per cent of $885,000.00 is $12,382.60?

A. 1.4 per cent.

* * * * * * *

Q. Tie that figure back into the appropriate calculation in defendant's Exhibit No. 6.

[fol. 147] A. That figure of $32,226.01 is the same figure as is on page 1.

Q. Likewise tie the percentage shown at the top of that stack back into the mathematical calculation shown in defendant's Exhibit No. 6.

A. That figure of 3.64 per cent is the proportion that the $32,226.01 is of $885,000.00.

Q. By proportion do you mean percentage relationship?

A. Yes.

Q. Now in the same way will you explain and tie back into mathematical calculations contained in defendant's Exhibit No. 6 the remaining stack shown on the right-hand side of Graph No. 4, as you look at it?

A. That figure of $12,382.60 is the amount that is shown

on page 1 of the exhibit referred to and the 1.40 per cent is the percentage that the $12,382.60 is of $885,000.00.

Q. Now what rates yielded and produced the amounts for return effected by this calculation to which you have just testified * * *.

A. The present rates in effect in the City of Laredo.

Q. Does that include the residential rate which has normally been referred to and described for convenience in the testimony here as the 75 cents rate?

[fol. 148] A. It is.

Q. Now, Mr. Womack, turn to page 2 of defendant's Exhibit No. 6. On the top of page 2, and in the first paragraph thereof, is there a tabulation of certain calculations?

A. There is.

Q. For what accounting period are these calculations made?

A. For the calendar years 1932 and 1933.

Q. What is the heading of the first column of dollar figures, reading from the left?

A. Operating revenues.

Q. Please explain to the court and the jury how you arrived at the dollar figure shown under this heading Operating Revenues?

A. That is the mathematical calculation of applying the 55 cents rate to the volume of gas sold.

Q. To residential consumers?

A. To residential consumers.

Q. How about revenues from classes of consumers other than residential?

* * * * * * *

A. The answer to that last question should have been that the revenues from other consumers are computed at the [fol. 149] rates in effect at the present time.

Q. And are they the identical revenues received from classes of customers during these accounting periods, other than residential?

A. They are.

Q. From what exhibits now in evidence are the figures taken which are shown under the column headed Operating Expenses, on page 2 of defendant's Exhibit No. 6?

A. They are taken from Exhibits 1 and 3.

Q. Explain the mathematical calculation by which the

figures shown under the last column of this tabulation headed Net Operating Revenues, are arrived at.

A. Those figures are differences between the first two columns. That is, it is the difference between the operating revenues and the operating expenses.

Q. For example, for the year 1932?

A. The operating revenues for the year 1932 are $161,637.65; the operating expenses are $125,001.40 and the difference or the net operating revenue is $36,636.25.

Q. And for the year 1933 is the calculation precisely the same?

A. It is.

[fol. 150] Q. Now what is shown in the second paragraph on page 2 of defendant's Exhibit No. 6?

A. The net revenues at the Commission's rate of 55 cents, after deducting three per cent of $885,000.00 . . .

Q. Now, take the calculations and figures shown in the first paragraph on this page 2, and show how the figures under the column in the second paragraph on page 2, headed Net Revenues after deducting three per cent of $885,000.00 were arrived at.

A. The figure $10,086.25 is the difference between three per cent of $885,000.00 and the net operating revenues shown above of $36,636.25.

Q. Now, state those two figures in dollars.

A. The net operating revenue shown above is $36,636.25; after deducting $26,550.00 from that figure, the net amount for return is $10,086.25.

Q. Now, what is the $26,550.00 which you mentioned?

A. That is three per cent of $885,000.00.

Q. Now, what per cent of $885,000.00 is $10,086.25?

A. 1.14 per cent.

Q. And in what column on page 2 of defendant's Exhibit No. 6 does that percentage figure appear, if it does appear?

[fol. 151] A. On the right hand column.

Q. And are the figures which you have just given for the calendar year 1932?

A. They are.

Q. Now, are the figures which are shown in the second paragraph on page 2 of defendant's Exhibit 6, as the figures for the year 1933, arrived at by similar calculations to those for the year 1932?

A. They are.

. . . . . .

Q. Mr. Womack, I don't know that the record is entirely clear that your computation of operating revenues at the fifty-five cent rate is actually a computation. Will you state as nearly as you can again how you arrived at the figures shown in the column headed "Operating Revenues" on page 2 of Defendant's Exhibit 6.

A. That is a mathematical calculation of fifty-five cents multiplied per M. C. F. sold to residential customers in the city of Laredo, to which has been added revenue actually derived from all other classes of customers.

Q. Now, are those figures calculated to represent as closely as possible all bills payable within ten days?

A. Yes, they are.

* * * * * * *

[fol. 152] Cross-examination.

Questions by Mr. Lange:

Q. All right; now which is the next item that you adjusted?

A. I decreased uncollectible accounts $219.72.

Q. Why was that done?

A. The reason for this reduction was that uncollectible accounts occurring on the pipe line side, and this was all on the transmission side, should not be applied as against the City of Laredo, and I did not charge any uncollectible accounts into the City of Laredo except those that were incurred there.

* * * * * * *

Q. Well, in the pleadings that the company now files, on page 23 of its first amended original answer, this statement appears: "The historical cost of said property exceeds $1,200,000.00". If there is no basis on which to predicate the historical cost, how did the company arrive at that figure?

A. That figure is the ledger figure of costs that were charged as against fixed capital. Now, that does not necessarily mean that all of the costs were capitalized that should have been. It does not mean the records were complete and that there should not have been additional charges there that were never made. I do not recall your particu-[fol. 153] lar figure there, nor have I seen that, but that is generally true.

* * * * * * *

A. The total delivered to the Laredo area was twenty-seven thousand four hundred and thirty-one M. cubic feet at a pressure base of two pounds point fourteen from the Jennings field.

Q. During the twelve-month period ended December 31, 1933?

A. Yes.

* * * * * * *

Q. Now, with reference to the new business expense, on page 4 of the Exhibit, you gave us yesterday the Laredo district apportionment. Can you give us the general office and the San Antonio district apportionment of that—the way that is apportioned? Is that apportioned in the three districts?

A. There is a part of the new business expenses included here apportioned from the Laredo district, from the San Antonio district, and from those accounts carried in the Houston office.

Q. Yes. Now, you gave us yesterday the Laredo. Now, can you give us the portion apportioned from the Houston office, and also that from the San Antonio district?

[fol. 154] A. The amount of new business expense apportioned from the San Antonio district to the city of Laredo is $21.15.

Q. Now, the total from the Houston office?

A. The total amount of new business expenses as carried in the accounts on the Houston office records and apportioned to the city of Laredo is $2,768.24.

Q. That is from the Houston office?

A. That is from the accounts carried in the Houston office.

* * * * * * *

Redirect examination.

Questions by Mr. Coates:

Q. Now, in your judgment, and from your study of the distribution of these expenses, do you think, or not, that the distribution and apportionments made, which you have reflected here, conform with a reasonable degree of accuracy, to the actual facts with respect to the actual incurrence of those expenses?

A. Yes, I do.

Q. And as incurred for the property or the section of property for which the expense was incurred?

A. I do.

[fol. 155] Q. Mr. Womack, in your cross examination I believe you made a distinction between the price of gas purchased; that is, the amount paid the independent well owner, and the cost of purchased gas?

A. Yes, I believe I made that distinction.

Q. And will you explain what that was; what was your basis for that distinction?

A. The price of purchased gas is that amount of money that is paid for the gas that is bought, only.

Q. Paid to whom?

A. To the owner of such gas. The cost of purchased gas includes expenses other than merely the price paid to the gas owner for his gas.

Q. Why is that?

A. Well, it includes such expenses as geological expense, land and lease expense, and it includes just a number of different kinds of costs.

Q. Well now, does this company, where it purchases gas from a well owner, and does not either own the lease or the well, incur any geological expense?

A. Yes.

Q. In connection with that property that it does not own?

A. Yes.

[fol. 156] Q. Do you know whether or not it incurs any mapping expense?

A. Yes, it does.

Q. Does it incur any expense of the chemical department?

A. Yes.

Q. Does it incur any expense of the land and lease department?

A. Yes.

Q. Is gas purchased from an independent well owner without carefully defining the boundaries of his lease and the examination of his title and so on?

A. No, the company makes an examination of those titles.

Q. And what, with respect to measurement expense?

A. Well, the company maintains a measurement department and part of its function is in connection with the

measurement of gas and the production of gas, whether it is purchased or produced.

Q. That is, you have to measure the gas that you purchase, and read those meters where you purchase the gas, as well as where you produce the gas?

A. That is correct.

[fol. 157] Q. And is there likewise any administrative expense which in your judgment as an accountant should properly be distributed to purchased gas?

A. Yes.

Q. And how about the accounting?

A. There is accounting expense in connection with purchased gas.

* * * * * * *

Cross-examination.

Questions by Mr. Bobbitt:

Q. Mr. Womack, have you your Exhibit 1 there, please, sir?

A. Yes.

Q. And Exhibit 3?

A. Yes.

Q. Exhibit 1, under the head of Residential Sales, I believe your exhibit shows that for the year ended December 31, 1932, your gross revenue was $119,489.41; is that correct?

A. Derived from residential business, it is.

Q. Yes, derived from residential business; and for the year ended December 31, 1933, the gross revenue derived from residential business was $110,686.26?

A. Yes.

Q. Is that correct?

A. Yes.

[fol. 158] Q. That represents a loss in the difference of those figures for the years 1932 and 1933?

A. Yes.

* * * * * * *

Q. What I am getting at is the number of residential meters there December 31, 1932, and the number on December 31, 1933, the number of meters for residential consumers?

A. What do you want, just the months of December only?

Q. I want the number of meters in use serving gas to residential consumers on December 31, 1932, or the average for the year that you set up at that time?

* * * * * * *

A. The average for the year 1932 was 4214; the average for the year 1933 was 4177.

Q. There is a decrease in the number of meters to the extent of the difference in those figures?

A. A slight decrease—37.

Q. Has there been a decrease in the number of meters from that date, December 31, 1933, down to date?

A. I don't have any figures that I have made up during this year—I mean on business done this year.

Q. Well, there is a decrease in the number of domestic consumers—residential consumers in 1933 over 1932?

[fol. 159] A. There was a decrease of 37.

Q. There was a decrease in the amount of gross revenue, as you have just testified about?

A. Yes.

* * * * * * *

Q. Now, Mr. Womack, turn to Exhibit 3 at page 4, if you please, a moment. On the question of Operating Expenses for the twelve months ended December 31, 1933, that exhibit there undertakes, as I understand, to give the amount of such expenses allocated to Laredo for that period?

A. It gives the amount that is apportioned or that has been distributed to Laredo for that period.

Q. For that period?

A. Yes.

Q. Let's get this clear. What is the distributing company that is distributing gas in the City of Laredo? What is the name of that concern?

A. United Gas Public Service Company.

Q. Well, isn't there a subsidiary, Texas Border Gas Company?

A. No.

[fol. 160] Q. It took the place of the Texas Border Gas Company—the United Gas Public Service Company took the place of the Texas Border Gas Company as a distributor in the City?

A. Yes.

* * * * * * *

Q. Did the United Gas Public Service Company likewise take the place of the South Texas Gas Company—the transmission company?

A. Yes.

Q. So those two companies are out of existence; is that right?

A. Yes.

Q. And the United Gas Public Service Company is doing all of the work that they formerly did; is that correct?

A. Yes.

Q. What is the total amount, Mr. Womack, of the Supervision and Consultation fees paid by the United Gas Public Service Company for the period—for the twelve months ending December 31, 1933, of which Laredo pays a part?

A. $116,578.87 for 1933.

[fol. 161] Q. What is that figure?

A. $116,578.87.

Q. That is the total amount for that item paid by the United Gas Public Service Company?

A. It is.

Q. And the amount allocated to the City of Laredo was as set up in this exhibit, $2,376.61?

A. That is correct.

Q. To what company were those Supervision and Consultation Fees paid?

A. Electric Bond & Share Company.

* * * * * * *

[fol. 162] Direct interrogatories:

Mr. Coates: We now desire to read the Direct Interrogatories propounded by the defendant, United Gas Public Service Company, to the witness, E. B. Neiswanger.

Direct Interrogatory No. 1. * * *.

Answer. My name is E. B. Neiswanger, my age is 55 and my present address is 710 Nixon Building, Corpus Christi, Texas. My present occupation is Vice President in charge of operations of the Central Power and Light Company.

* * * * * * *

Direct Interrogatory No. 4. • • •.

Answer. In January, 1928, I was President and General Manager of the Central Power and Light Company and continued in that capacity until January, 1933, since which time I have been Vice President in charge of operations.

Direct Interrogatory No. 5. Does the Central Power and Light Company own a power plant located at the City of Laredo, Texas?

Answer. Yes.

• • • • • • • •

Direct Interrogatory No. 7. Please state, if you know, whether or not the Central Power and Light Company has ever purchased natural gas for use in its Laredo power plant from the United Gas Public Service Company.

Answer. Yes.

[fol. 163] Direct Interrogatory No. 8. If you have answered the preceding interrogatory "yes", then please state whether or not the Central Power and Light Company has purchased natural gas for use in its Laredo power plant from the United Gas Public Service Company and its predecessors in title during the period from January 1, 1928, down to the present time.

Answer. Yes.

• • • • • • •

Direct Interrogatory No. 9-(d). • • • will you please examine such records and state what total yearly amounts were paid by the Central Power and Light Company to United Gas Public Service Company for gas delivered to the Laredo power plant of the Central Power and Light Company during the following periods of time: Year 1928; Year 1929; Year 1930; Year 1931; Year 1932; Year 1933 from January 1st to present time.

[fol. 164] Answer. Year 1928—$65,539.96; Year 1929—$73,339.73; Year 1930—$71,776.18; Year 1931—$29,111.32; Year 1932—$8,793.26; Year 1933—$57.90 from January 1, 1933, up to present time. (The fiscal year ending December 25th.)

• • • • • • •

Direct Interrogatory No. 11. • • • please state, if you know, why the amounts paid for gas by the Central Power

and Light Company beginning with the year 1931 show a decline in comparison to the amounts paid in the preceding years.

Answer. During the year 1931 the Central Power and Light Company completed the construction of its interconnected electric transmission system thereby connecting the electric distribution system in the city of Laredo and electric lines in the Laredo area to the main transmission system and other electric generating plants then operated by the Central Power and Light Company. At the time this interconnected electric transmission system was completed the Central Power and Light Company was able to serve the [fol. 165] electric load at and near Laredo from the central transmission system instead of generating the electric energy at the electric generating plant at Laredo as had previously been done. With the decline in the total of the electric energy generated at the Laredo power plant, the amount of money paid for gas used at this plant began to decrease as is reflected in the tabulation of monies paid for gas under subdivision "b", Interrogatory No. 9, above.

Direct Interrogatory No. 12. • • •.

Answer. Beginning during the year 1932 and continuing throughout 1932 and 1933, the electric generating plant at Laredo was placed on an emergency standby operating basis, which means that this plant was operated only at such periods as was necessary in order to generate such additional electric energy as from time to time it was not economical or possible for such electric energy to be delivered to the distribution system in Laredo from the central transmission system. During the entire year of 1933 this plant was only operated during short periods as might be deemed advisable in order to insure that the equipment in this plant was in proper operating condition so that the equipment could have been used for generating electric energy over a period of time had it been found necessary to do so on account of the [fol. 166] transmission system being entirely out of service due to conditions reasonably beyond the control of the operating company. Inasmuch as the transmission system referred to above has two distinct sources of electric energy supply, the operating company was able to render continuous electric service at Laredo without operating the Laredo emergency standby plant other than during the periods that the plant was operated for test purposes.

Direct Interrogatory No. 13. • • •.

Answer. Inasmuch as the inter-connected transmission system described above has been completed and adequate service rendered to the city of Laredo therefrom, it is very definite that future uses of gas to be purchased from the United Gas Public Service Company for operating the electric generating plant at Laredo will be limited to only such gas as might be necessary from time to time to operate this plant for short periods to insure that the generating equipment is in proper operating condition, or for the actual generation of electric energy at Laredo during emergency periods when the electric transmission system is wholly out of service on account of emergencies beyond the control of the operating company.

Direct Interrogatory No. 14. Please state whether or not in your opinion the amount of gas purchased by the Central Power and Light Company for its Laredo power plant [fol. 167] from the United Gas Public Service Company during the expired portion of the year 1933 is indicative of the probable usage in the future under normal operating conditions. Please explain.

Answer. Yes, as this plant will only be used for test purposes and emergency service as explained under the previous interrogatory.

* * * * * * *

Direct Interrogatory 15-(a). * * *.

Answer. It is the intention of the management of the Central Power and Light Company to purchase gas from the United Gas Public Service Company for the operation of its Laredo power plant only in cases of emergency operation of this plant. By emergency operation is meant that the Laredo power plant will only be operated during such periods of time as the inter-connected electric transmission system of the Central Power and Light Company is wholly out of use due to reasons reasonably beyond the control of the operating company. This particular interconnected electric transmission system is connected to various other electric power plants where electric energy is now produced such generating stations being so located that one section of the transmission system could be out of service without affecting the delivery of electric energy to Laredo from [fol. 168] another section of the transmission system. Since this double feed is now provided from the transmission

system with an adequate source of supply to take care of the present Laredo load from two distinct sources of production, it will be extraordinary conditions only that would cause both divisions of the transmission system to be inoperative at the same time.

Direct Interrogatory No. 16. Did you on July 21, 1933, write a letter addressed to United Gas System, Rusk Building, Houston, Texas, attention Mr. H. E. Randall, Industrial Department, pertaining to gas purchased from the United Gas Public Service Company?

Answer. Yes.

* * * * * * *

Direct Interrogatory No. 16-(d). If you have refused to attach the original carbon copy, then will you attach a true and correct copy thereof to this deposition and have the notary mark it Exhibit B for identification? Have you done so? If not, why not?

Answer. Inasmuch as the original carbon copy of the above mentioned letter is not submitted herewith we are attaching hereto a true and correct copy as an exhibit in this case.

[fol. 169] * * * * * * *

July 21, 1933.

United Gas System, Rusk Building, Houston, Texas.

Attention Mr. H. E. Randall, Industrial Department

DEAR MR. RANDALL:

Complying with your request of July 18, we are giving you the following purchase figure of gas taken from our records and which figures represent the cost of gas used in our Laredo power plant, which gas was purchased from your company during the years 1928 to '32 inclusive:

1928	$65,539.96
1929	73,339.73
1930	71,776.18
1931	29,111.32
1932	8,793.26

Gas purchased during the first five months of 1933 amounted to $24.40.

The decline in purchased gas in 1931 was occasioned by the completion of our inter-connecting transmission system which made it desirable for us to produce our power at the newer and more efficient plants.

In 1932 we continued to use a small amount of gas until the hydro plant on the Rio Grande at Eagle Pass was placed in operation, after which we operated the Laredo plant [fol. 170] only as an emergency unit. For instance, in September during the floods on the Rio Grande and Devils Rivers.

We have shown the gas requirements for the first five months of 1933 as indicating the possible usage under normal operating conditions. Since our entire system is now inter-connected and the plants on the Devils River, at San Benito, Corpus Christi and Victoria are all working together and inasmuch as the Laredo plant is inefficient and obsolete, this will only be operated as a standby unit for the protection of the service.

As to our possible future requirements of gas for this station, we do not have at this time any plans for operating this station other than in emergencies.

Trusting this is the information desired, I am,

Yours very truly, E. B. Neiswanger, Vice President.

ebn/k.

* * * * * * *

H. E. RANDALL, a witness for defendant, having been duly sworn, testified as follows:

Direct examination.

Questions by Mr. Coates:

Q. Please state your name.
A. H. E. Randall.

[fol. 171] * * * * * * *

Q. By whom are you employed now?
A. United Gas Public Service Company.
Q. In what capacity?
A. Manager of industrial sales.

* * * * * * *

Q. Mr. Randall, do you know of your own knowledge whether or not there is a refinery in or near Laredo called the Motor Fuel Products Company?

A. Yes.

Q. Are you acquainted with the business, affairs and the nature of the operation or the past operation of that refinery?

A. Yes.

Q. Is that refinery now in operation?

A. No, sir.

Q. How long has it been since it has been operated?

A. To my best recollection the plant was shut down in the early part of 1931.

Q. Is that refinery owned by one of the operating companies of United Gas Public Service Company?

A. Yes.

Q. Do you know why that refinery was shut down?

A. Because it was losing money.

Q. Do you know the extent to which it was losing money?

[fol. 172] A. From the time the plant was started until we closed it down, the sum was some $501,800 and some odd cents.

* * * * * * *

Q. Mr. Randall, based on your knowledge of the past operations of this plant, its operating costs, its location and the nature of the markets, and the location with reference to its markets for its refined products, will you state whether or not in your opinion this Motor Fuel Products Company within any reasonable time in the future will be reopened and recommence operations?

A. No, sir.

Q. Mr. Randall, do you have anything to do with the sale of gas to Central Power & Light Company, or did you, for its Laredo electric generating plant?

A. Yes.

Q. When the sales of gas to that plant commenced to decline, what if anything did you do?

A. I called upon the officials of the Central Power & Light Company, Mr. Neiswanger and others.

Q. For what purpose, Mr. Randall?

A. To determine if they were going to operate their plant and continue their operations or what could be done to have

that plant proceed—what we could do in the way of having [fol. 173] that plant go ahead.

Q. Now, during that period of time, did you make any investigation with respect to the efficiency of the plant of Central Power & Light Company, located there at Laredo?

A. Those records were shown to me by their chief engineer, Mr. Persons, of the efficiency of their different plants.

Q. How is the efficiency of an electric generating plant, with respect to the amount of fuel required, ordinarily and usually determined by the gas and electric industry?

A. So many heat units per K. W.

Q. Have you been through the Laredo plant of the Central Power & Light Company?

A. Yes.

* * * * * * *

Q. In your opinion, based on your knowledge of the power generating stations of Central Power & Light Company and the state of efficiency of the Laredo plant, will the power generating station of Central Power & Light Company located at Laredo be operated for the future, except for emergency and standby purposes?

A. I could not say that the plant would not be operated. I would say that it would be uneconomical to operate the plant.

[fol. 174] Q. Why?

A. On account of the difference in efficiency of that plant and other plants, or that might be obtained with a more modern plant. I would say it would be uneconomical to operate that plant.

The Court: I don't believe you understood that question: He did not ask you whether it would be economical to operate the plant; he asked you whether or not in your opinion it would be operated in the future, except as standby equipment.

A. In my opinion, it would not be operated except as an emergency plant.

* * * * * * *

Cross-examination.

Questions by Mr. Bobbitt:

* * * * * * *

Q. You don't know then, the factors that caused Motor Fuel Products Company to shut down, do you?

A. I have a statement of the Motor Fuel Products, which showed those factors.

Q. Was one of those factors very high salaries paid to the officers of the company?

A. I do not think that was the cause or that it had very much bearing on it.

Q. You don't think it had very much bearing on it?

[fol. 175] A. No, sir.

Q. That's all.

Questions by Mr. Coates:

Q. Since the matter has been gone into, do you know the factors which in your opinion would prevent the profitable operation of that plant at this time, or at any time during the year 1932 or 1933 or for a reasonable time in the future?

A. I think I can state some of the factors, yes.

Q. Will you please state some of the main ones?

A. One thing is their crude production that was used in the plant, that had a low gasoline content, and they had to use considerable natural gasoline to blend with that to make a gasoline that could sell. Another, was that the markets were not there for the refined products.

Q. Why didn't they ship it to some market?

A. The transportation charges out of Laredo were too high to ship it to a market and compete with other refineries.

Q. And does that condition still prevail?

A. Yes.

* * * * * * *

Questions by Mr. Bobbitt:

Q. The operation of this plant furnished an outlet for a large amount or a large market for industrial gas consump-

[fol. 176] tion, did it not?

A. No, sir; I wouldn't say it was a large market for industrial gas.

Q. They burned a lot of natural gas in that refinery didn't they, there in Laredo, when it was in operation?

A. Do you mean large sales, compared with other refineries?

* * * * * * *

Q. Approximately how much gas did this Motor Fuel Products Company consume when it was in operation?

A. If I might show the exact amount here, I think I have it. For the period 1928, through March, 1929, it was $2,959.00; and from April 10, 1929, to December 31, 1929, it was $7,103.60. January 1, 1930, through December 31, 1930, it was $16,347.80.

Q. That is money paid by that concern for natural gas?

A. Yes.

Q. To the Texas Border Gas Company?

A. Yes.

Q. And the same concern owned both of them?

A. Yes.

* * * * * * *

[fol. 177] W. W. STEIN, a witness for defendant, having been duly sworn, testified as follows:

Direct examination.

Questions by Mr. Coates:

Q. Please state your name.

A. W. W. Stein.

Q. Where do you live, Mr. Stein?

A. In Laredo, Texas.

Q. How long have you lived at Laredo?

A. Since 1910.

Q. In what business are you engaged, Mr. Stein?

A. In the natural gas business.

Q. And how long have you been engaged in that business?

A. Since October, 1910.

Q. By whom are you now employed?

A. United Gas Public Service Company.

Q. And in what capacity?

A. The district manager of the Laredo district.

Q. District manager of the Laredo District?

A. Yes, the Laredo district.

Q. And do you cover distribution and transmission and production operations, or what do you cover?

A. I cover distribution operations.

Q. Mr. Stein, in 1929, with what company or companies were you connected?

[fol. 178] A. In 1929 I was connected with the South Texas Gas Company.

Q. In what capacity?

A. As vice president and manager.

Q. What was the situation in 1929, with respect to the gas supply of South Texas Gas Company, and prior thereto?

A. We were looking for an additional supply.

Q. Why?

A. Because we had the highest load we had ever experienced at that time, and also we had prospects of an increased load.

Q. And did you have enough gas to supply your present and your prospective increased load?

A. We did not.

Q. Did you undertake to get an additional supply of gas?

A. I did.

Q. For sale in what market, what general market?

A. In the Laredo district.

Q. State whether or not at that time you negotiated a contract for an additional supply of gas?

A. We did.

Q. What companies were parties to that contract?

A. The South Texas Gas Company and the Southern Gas Company.

[fol. 179] Q. Have you the original of that contract, and likewise some photostatic copies of it, with you?

A. I have.

* * * * * * *

Q. Have you compared the original signed copy of this contract, Mr. Stein, which I now hold in my hand, with the photostatic copies of the contract which you have?

A. I have.

Q. And does the photostat contain a picture of each page in the original contract?

A. It does.

Q. The original of the contract having been compared with the photostat, we offer the photostat in evidence, and ask that the same be marked Defendant's Exhibit No. 7 for identification.

(No objection.)

(Thereupon the Contract so identified by the witness was offered in evidence and the contract is set out on the pages next following:)

[fol. 180] DEFENDANT'S EXHIBIT No. 7

Agreement Between Southern Gas Company and South Texas Gas Company.

This Agreement made and entered into this 1st day of November, 1929, by and between Southern Gas Company, a Delaware corporation, having a permit to do business in Texas, hereinafter called "Southern", party of the first part, and South Texas Gas Company, a Delaware corporation, having a permit to do business in Texas, hereinafter called "South Texas", party of the second part,

Witnesseth:

Whereas, Southern is the owner of a gathering system in the Carolina-Texas Gas Field in Webb County, Texas, and has contracts for the purchase of gas from wells located in said field, from which said wells it is now taking gas into said gathering system; and

Whereas, South Texas owns a gas pipe line extending from said Carolina-Texas Gas Field to the City of Laredo, Texas, and desires to make pipe line connections to the gathering system of Southern and purchase from Southern all gas which Southern may purchase from wells in said [fol. 181] Carolina-Texas Gas Field and take into said gathering system;

Now, Therefore, for and in consideration of the covenants and agreements hereinafter set forth, to be kept and performed by the respective parties hereto, it is agreed by and between said parties as follows:

I

Southern agrees to maintain and keep in good repair its said gathering system in the Carolina-Texas Gas Field,

and further agrees that it will from time to time negotiate for the purchase of gas from any wells which may be completed near its gathering system, and if satisfactory purchase arrangements can be made, will connect such wells into said gathering system.

II

Southern agrees that South Texas shall have the right to make necessary changes in said gathering system, and to take up and re-lay such parts of said gathering system as may be necessary to enable South Texas to make proper connection of its pipe line to said gathering system. Southern further agrees that South Texas shall have the right to reimburse itself for all expense incurred in making such necessary changes by withholding one-sixth (1/6) of the first monies accruing to Southern under this agreement, as hereinafter set out.

[fol. 182]

III

South Texas shall operate said gathering system and pay all the cost of such operation, including the blowing of wells, the furnishing of meter charts and the collecting and forwarding of said charts. Southern shall continue to maintain and repair said gathering system as well as all measuring equipment, shall make any and all new well connections and shall regularly calibrate all meters recording deliveries of gas into said gathering system.

IV

Southern will continue, in its own name, to purchase and receive into said gathering system, and will account therefor to the owner of each respective well, all gas from wells now connected to said gathering system or which may hereafter be connected to said system.

V

In cases where gas wells owned by South Texas, or controlled by South Texas under gas purchase agreements, can be connected with the said gathering system of Southern, providing such gas can be taken through said gathering system more advantageously than such gas can be taken direct into the lines of South Texas (in order to avoid duplication of gathering lines in this Field), South Texas

shall allow Southern to connect such wells to its gathering system and to transport said gas through said gathering [fol. 183] system and deliver the same into the pipe line of South Texas. For all such gas so taken into said gathering system of Southern, South Texas shall pay Southern, as consideration for the use of said gathering system in transporting such gas, the sum of one cent (1¢) per thousand cubic feet, measured at two pounds above an assumed absolute atmospheric pressure of fourteen and four-tenths (14.4) pounds per square inch.

VI

South Texas shall purchase and receive from Southern under this agreement all gas which may be received in said gathering system from all wells connected thereto (except gas taken from wells owned or controlled by South Texas), it being understood, however, that South Texas shall purchase and receive under this agreement an average minimum of two million cubic feet of gas daily, provided Southern is able to deliver that amount of gas from wells connected to said gathering system. The volume of gas delivered to South Texas hereunder shall be taken to be the combined total of all gas delivered from the wells into said gathering system as measured at the wells (except gas taken from wells owned or controlled by South Texas), it being intended by this arrangement that South Texas will assume all loss from leakage in gathering lines. South Texas shall have the right to use said gathering system to the full capacity thereof for the transportation and deliv- [fol. 184] ery of said gas from the wells to its pipe line system.

VII

For all gas which South Texas taken and receives from Southern hereunder, South Texas shall pay Southern at the rate of six cents (6¢) per thousand cubic feet measured at two pounds above an assumed atmospheric pressure of fourteen and four-tenths (14.4) pounds per square inch. Billing for this gas by Southern to South Texas shall be based upon the combined meter readings of each well delivering gas into said gathering system. Statements will be rendered by Southern to South Texas as quickly after the end of each month as practical, and payment shall be

made by South Texas to Southern on or before the twentieth day of each month covering all gas taken during the preceding calendar month.

VIII

This agreement shall continue and remain in force as long as the wells which are connected with said gathering system or which may hereafter be connected therewith are capable of delivering gas into said gathering system in commercial quantities, unless sooner terminated by agreement of the parties hereto.

IX

This agreement shall extend to and be binding upon the [fol. 185] respective successors and assigns of the parties hereto.

In Witness Whereof, the parties hereto have executed this instrument in two counterparts, each of which shall constitute an original, as of the day and year first above written.

Southern Gas Company, (Signed) by L. A. Nordan, Vice President.

Attest: N. N. Oille, Assistant Secretary.

South Texas Gas Company, (Signed) by W. W. Stein, Vice President.

Attest: (Signed) Leo Wright, Assistant Secretary.

End of Defendant's Exhibit No. 7.

* * * * * * *

[fol. 186] Q. Mr. Stein, outline briefly, but comprehensively, the circumstances leading up to the execution of this contract.

A. In 1929, as I stated before, we were in the market for additional gas supply, and in looking around for it, I found that the Southern Gas Company had a gathering system in the Carolina-Texas field, connected to a number of wells from which they were not taking gas at that time, and had not been for some time previous. In inquiring, I found that they did not expect to take gas from that field.

Q. Now, Mr. Stein, did what is commonly known and

has been referred to in this record as the Moody-Seagraves interests have an interest in the South Texas Gas Company at that time?

A. They did.

Q. That is, a stock interest?

A. A stock interest.

Q. Did they likewise have a stock interest in the Southern Gas Company at that time?

A. They did.

Q. Were you at that time an officer of or in any way connected with the Southern Gas Company?

[fol. 187] A. I was not.

Q. And I believe you stated you were a vice president of South Texas Gas Company?

A. Yes.

Q. State whether or not you were in charge of and responsible for the operations of that company in the Laredo area?

A. I was.

Q. And who was the executive or who were the executives responsible for the operation of the Southern Gas Company in that area at that time?

A. Mr. L. A. Nordan.

Q. All right; go ahead, Mr. Stein.

A. He was the vice president of Southern Gas Company. And so, in contacting Mr. Nordan, I inquired of him whether or not we could purchase the gathering system he had in the Carolina-Texas field, and connect the wells which were connected to that gathering system, to our lines.

Q. Well now, did the South Texas Gas Company at that time have a gathering system in the Carolina-Texas field?

A. They had a gathering system connected to some wells that they were taking gas from.

Q. Well, was that gathering system connected to the wells and located in the part of the field where these additional wells that you speak of were?

[fol. 188] A. The South Texas Gas Company's gathering system was in the southern part of the field, and the Southern Gas Company's gathering system was in the central and northern part of the field.

Q. All right; go ahead.

A. Mr. Nordan informed me that he could not readily sell the gathering system in that field, and after we talked it over for some time he thought possibly some arrangement

might be worked out for the Southern to continue to purchase this gas and gather it, and deliver it to the South Texas Gas Company.

Q. What reason did he give you for telling you that the Southern could not sell its gathering system?

A. He said it was a part of the properties which was under mortgage and could not readily be sold.

Q. That is, under the corporate mortgage of the Southern Gas Company, you mean?

A. Yes, that is correct; it was under the corporate mortgage of Southern Gas Company.

Q. All right, go ahead, Mr. Stein.

A. So, after some consideration, we arrived at a figure or an arrangement whereby they would gather and deliver the gas to us.

Q. And is that arrangement set forth in this contract which has been introduced in evidence and marked Defendant's Exhibit No. 7?

[fol. 189] A. It is.

Q. Mr. Stein, you state at that time that Mr. Nordan was the vice president in charge of the affairs of the Southern Gas Company?

A. I did.

Q. And that that was a part of the Moody-Seagraves group through stock ownership of Moody-Seagraves in that company?

A. It was a part of it.

Q. And the Moody-Seagraves group likewise owned a part of the stock of South Texas Gas Company?

A. It did.

Q. Now, were you at that time in any way responsible for the operations or the financial success of Southern Gas Company?

A. I was not.

Q. Was Mr. Nordan in any way responsible for the operations or the financial success of South Texas Gas Company?

A. He was not.

Q. Well, just state how you went about entering into this contract.

A. We discussed the method by which the matter could be arranged and ultimately, after considerable discussion [fol. 190] and after several days delay, arrived at a price of one cent a thousand for gas that they might gather for

us and six cents a thousand gross for such gas as they might purchase and sell to us.

Q. Did that six cents cover both the gas at the well mouth and the delivery to the pipe line of South Texas Gas Company?

A. It did.

Q. Now, did you execute that contract?

A. I did.

Q. At the time you executed it did you, based on your judgment as a business man, feel that that was a good contract for South Texas Gas Company?

A. I certainly did.

Q. Do you still think so?

A. I certainly do.

Q. If Southern Gas Company had been in no way affiliated with the Moody-Seagraves group, in your judgment, would you have entered into the same character of contract with any other independent concern?

A. Under the circumstances existing in the field at that time, with the wells there showing a steady and continued loss in pressure, I thought it was an excellent opportunity to make this sort of an arrangement, particularly so that [fol. 191] it——

The Court: Mr. Witness, I don't believe you understood the question at all. At any rate you are not answering it.

The Witness: Read the question, please.

The Court: Read it.

(Thereupon, the Reporter read the last preceding question.)

A. Under the circumstances, I would.

* * * * * * *

[fol. 192] Q. Mr. Stein, are you acquainted with the transmission line that leads from Jennings Junction to Pescadito?

A. I am.

Q. And are you acquainted with the location and to a general extent with the operation of that line?

A. I am in a general way.

Q. Are you familiar with whether or not any gas was delivered through that line in the past few years which was used in Laredo?

A. It was used in 1929 and 1930 and for many years prior to 1929.

Q. Yes.

A. And part of 1931.

Q. Were you in that territory in 1932?

A. I was there only the last six months.

Q. Since that time what has been the use of that line for the service to Laredo, if you know?

A. Well, it was used in the last two months of 1933.

Q. The last two months of 1933. Do you know whether or not it was filled with gas or otherwise during any additional part of 1933.

A. It was kept filled with gas, except during the time that there was some major repair work done on it.

Q. For what service area was it kept in readiness to serve?

[fol. 193] A. Laredo.

Q. Now, Mr. Stein, are you in charge of the operations of the Laredo distribution system?

A. Yes, I am.

Q. Are you responsible for the operating expenses incurred in connection with that distribution system?

A. I am.

Q. What, in your judgment, as an operating man, has been the character with respect to the amount of those operating expenses so incurred?

A. I have my district down as the lowest of any district in the entire United Gas System per meter—on a meter basis.

Q. Have you been making any efforts to save money?

A. I have indeed. I think I have the record for the lowest expenses.

Q. What have you to say with reference to the maintenance expenses of the Laredo distribution system?

A. It has been kept to a minimum. We would like to spend a little more money on it if we could.

Q. How long have you been operating gas distribution system properties?

A. I have been in charge of the distribution operations completely since 1927 and for a number of years prior to [fol. 194] that time in connection with Dr. Cullinan, who is the manager of the property.

Q. In your judgment, can or can not the maintenance costs of the Laredo distribution system be kept for the

future under economical operations at the level at which such costs have been for 1932 and 1933?

A. They can not without a resultant loss in the efficiency of the system.

* * * * * * *

Q. Now, Mr. Stein, are you familiar with the construction of the residences there in the city of Laredo?

A. To a certain extent, yes.

Q. What type of fuel are those residences, generally speaking, constructed and equipped to use?

A. In the last twenty years practically every residence that has been built has been built with the idea of using natural gas as fuel.

Q. And state whether or not provision has been made in the construction of those residences for the use of any other character of fuel, generally speaking.

* * * * * * *

A. There has been no equipment for using other fuel.

Q. Now, Mr. Stein, is it part of your business to ascertain and know about competitive fuel installations, either [fol. 195] residential, commercial, or industrial, within the city of Laredo?

A. It is.

Q. What is the situation with reference to installations in residences there in Laredo for the use of fuels other than gas?

A. There is a very, very small percentage of installations that use other fuels than gas.

Q. Do you know approximately, at least, how many electric cooking ranges there are installed there in Laredo?

A. There are approximately ten. I know of three.

Q. You know about three. Your customer data shows ten?

A. That is the information we have so far.

Q. And what with respect to electric hot water heaters?

A. I know of only one.

Q. And what with respect to electric space heaters?

A. There are very few.

Q. And how about installations in the—commercial installations to use competitive fuel; do you know about those?

A. I know of three offhand.

Q. How about industrial installations using competitive fuel?

A. A like number.

* * * * * * *

[fol. 196] Q. Now, what about the number of gas consumers in the City of Laredo as compared with the consumers of other character of public utility service?

A. We have more gas meters than the Central Power & Light Company has of electric meters, or of water meters, or the telephone company has telephones.

Q. Now, have you got the figures on that?

A. I have.

Q. Please read them into the record. Have you got them as of the end of 1933?

A. I have them as of January 1, 1934.

Q. Please read them into the record.

A. We have 4775 gas meters. There are 3087 light and power meters, and 4227 water meters.

Mr. Bobbitt: How many is that?

A. 4227. And there are 2769 telephones.

Q. Have you got the same figures as of the end of the year 1933?

A. I have.

Q. Please read those.

A. We had 4790 gas meters.

Q. At the end of 1932?

A. Yes; that is January 1, 1933.

Q. Yes.

[fol. 197] A. 3162 light and power meters; 4361 water meters; and 2742 telephones.

Q. And you say there are more gas meters and gas customers in town than there are customers of any other public utility service?

A. I do.

* * * * * * *

Q. Now, Mr. Stein, based on your past knowledge and experience in the gas business and as a practical operator of gas property and your knowledge of conditions in Laredo, what, in your judgment, would be the effect on con-

sumption and revenues of substituting for the presently existing residential rate the rate of fifty-five cents prescribed by the Commission?

A. In my judgment there would be a very slight increase in consumption, for the reason that in Laredo we have all homes equipped with appliances to use gas and gas only for cooking, space heating and hot water heating, and, being so completely equipped as the homes down there are, they would have no occasion to use additional gas by virtue of a lower rate.

Q. And how long, generally speaking, has the situation prevailed that you have described, namely, full equipment [fol. 198] of practically all residences for all types of use of gas?

A. For quite a number of years.

Q. For a number of years. Now, if you substitute the fifty-five cent rate for the seventy-five cent rate what about the increase, if any, in number of consumers?

A. At the present time we are serving nearly every one in Laredo who can afford to use gas, and by decreasing the rate there would be little incentive to add—little incentive to prospective consumers that may be there to get them on the line. There would be a class, possibly, that could not afford to use gas now that even at a lower rate would not be able to use it then.

Q. Now, is it your experience and observation in the gas business that there is always a certain number of customers in every town that are normally described as unprofitable consumers?

A. We have on our lines at the present time quite a number of customers whom we class as unprofitable customers, and by lowering the rate we might add a few more of those unprofitable customers.

Q. Well, you use some reasonable judgment as to where you are going to stop, don't you?

[fol. 199] A. Yes. The additional investment that might be necessary to add more customers would probably prohibit the making of the investment because of the small revenue to be received from such customers.

Q. Well, now, if perchance the reduction of the present rate from seventy-five cents to fifty-five cents would result in your adding to the line or getting signed up on service contracts some of those customers that you classify as not

profitable, what, in your judgment, as an over-all proposition would the having of those customers have on the net revenues of the Company?

A. It would have the effect of decreasing the net revenues, because it would add the burden on those who would be profitable.

Q. It takes a substantial investment or some investment to serve each additional customer?

A. It does.

* * * * * * * *

M. A. Abernathy, a witness for the defendant, being first duly sworn, testified as follows:

Direct examination.

Questions by Mr. Coates:

Q. Please state your name?

A. M. A. Abernathy.

Q. Mr. Abernathy, where did you go to college?

[fol. 200] A. Texas A & M College.

Q. What degree did you take?

A. B. S. in Civil Engineering.

Q. What business are you now engaged in?

A. In the gas business.

Q. How long have you been engaged in that business?

A. Directly, some ten years or more, and for several years prior to that I was some time, indirectly——

Q. What do you mean, some time, indirectly, Mr. Abernathy?

A. Well, I was working for several years prior to that, I was with a company which was in both the oil and the gas business.

Q. What company was that?

A. The Magnolia Petroleum Company.

Q. By whom are you now employed.

A. United Gas Public Service Company.

Q. In what capacity?

A. Superintendent of transportation or transmission department.

Q. Outline generally your duties as superintendent of transmission department, Mr. Abernathy.

A. My duties consist of the supervision of the operations and maintenance of the pipe lines, and duties incidental to that, from the wells to the points of delivery at the city gate or to consumers.

[fol. 201] Q. * * * And are the transmission lines in the Laredo area under your general supervision?

A. They are.

Q. And are you acquainted with the location and the layout of those transmission lines that take gas toward Laredo?

A. I am.

Q. Are you acquainted with the line that is customarily referred to as the Jennings-Pescadito line?

A. I am.

Q. Please outline in your own language, Mr. Abernathy, the use of that line for the service of Laredo, over the past several years.

A. Well, the line was used continuously for the service of Laredo for a number of years, up until 1931, I believe it was, and for a period there the use was rather intermittent, and beginning, I think, in September 1932, up until June, 1933, the line was kept in service, and ready for service to Laredo. At that time, some reconditioning work was done on it and the line was placed back in service, I believe, in November, 1933, and has been serving Laredo since that time.

Q. What, in your judgment, based on your knowledge of the situation down there, are at present the main sources of gas supply for Laredo—what fields?

[fol. 202] A. Well, I think the area in which the Jennings field is located is probably the best source of future supply for Laredo.

Q. The best future source of supply?

A. Yes.

Q. Where is the larger part of the gas Laredo is now getting coming from, at the present time?

A. It is coming from the Carolina-Texas field.

Q. Well then, why do you say the Jennings field is probably the best future source of supply?

A. Well, the gas in the Carolina-Texas field, the amount is declining, and the field as a whole is declining and apparently so far as we can see at this time, it will continue to decline and there seems to be more general producing

areas in the territory of the Jennings field area than in Carolina-Texas.

• • • • • • •

Q. Do you know about the sources of supply for delivery to your transmission lines, not only generally over the system, but in the Laredo area?

A. Yes, I do.

• • • • • • •

Q. And your answer was based on pressure and delivery conditions in the Carolina-Texas field?

A. Yes.

[fol. 203] Q. And with respect to the Jennings field, so far as that field and its various subdivisions have been developed, is your answer likewise based on pressure and delivery conditions of the various sands there?

A. Yes.

Q. Mr. Abernathy, you say that the Jennings-Pescadito line was out of service in recent periods; do you know why?

A. We were doing some work on the line, reconditioning some parts of it.

Q. Stated in your own language, what are the soil conditions along that line?

A. Well, the soil conditions are varied; there is a variance in the conditions along the line in different spots.

Q. State what that variance consists of.

A. Well, they are what we term as hot spots along the line, or spots in which the soil is more corrosive than it is in other places.

Q. By hot spots do you mean the soil is corrosive all along the line?

A. I say it is more corrosive in some places than it is in other parts of the line. There may be a little spot where it is corrosive, and the adjoining soil on either side not corrosive.

[fol. 204] Q. Where, generally speaking, are those hot spot conditions found?

A. Generally they are found in what we call salt flat places.

Q. In the language of a layman, what brings about this hot spot condition?

A. I think it is an alkali or salt condition in the soil.

A. Alone or combined with any other element?

A. Well, combined with the soil, of course.

Q. Now, your testimony is that that hot spot condition does not prevail all along the line?

A. No.

Q. And where you have a hot spot condition of that sort, what effect does that condition of the soil have on the pipe laid in those hot spots?

A. It corrodes—depending on the nature of the hot spot it causes more or less serious corrosion. The pipe corrodes more rapidly in those spots than in the good soil.

Q. What is necessary from time to time where you have a line of that sort in order to keep the same in a high state of service and efficiency?

A. It is necessary to recondition those pipe- in those hot spots.

[fol. 205] Q. What with respect to the rest of the pipe?

A. Well, not anything necessary.

Q. Where a line has one or two large leaks in it is it economical to operate it?

A. No, sir; depending on the size of the leaks, of course, it is not; it would reach a point where it would not be economical.

Q. Are you acquainted, Mr. Abernathy, with the contract between Southern Gas Company and South Texas Gas Company dated November 1, 1929, which contract has been introduced in evidence and marked Defendant's Exhibit 7?

A. I am.

Q. Are you acquainted with the conditions prevailing in the Carolina-Tex field in respect to the situation of the South Texas Gas Company and the Southern Gas Company prior to and at the time that contract was made?

A. Generally, yes.

Q. Will you please outline what are the conditions to which you refer?

A. At the time the contract was made the South Texas Gas Company's supply was declining, and they needed an additional supply of gas in the Carolina-Tex field.

Q. You mean the gas in the wells to which they were connected?

[fol. 206] A. It was declining, and they needed an addi-

tional supply of gas in that field at that time. The Southern Gas Company had an additional supply of gas, and the gathering system connected to the wells through which this supply was obtained.

Q. Do you know what was then done by these two companies?

A. They entered into a contract whereby the South Texas agreed to purchase gas from the Southern at a price of five cents at the well mouth, and likewise the Southern agreed to rent its gathering system to the South Texas, charging therefor at one cent per M. C. F. for all the gas transported through the gathering system. The Southern likewise agreed to attempt to purchase additional gas and to connect additional wells in the field at their expense and to maintain the gathering system.

Q. Now, do you know what, if anything, was done with the gathering system of the Southern Gas Company in the Carolina-Texas field?

A. Well, the system they had at the time of the contract, it was necessary to rearrange it to fit in with and tie into the lines of the South Texas Gas Company.

Q. Prior to the time this contract was entered into was the gathering system so located and arranged and connected that it could tie to these producing wells and serve [fol. 207] gas to the Laredo line of the South Texas Gas Company?

A. It was not.

Q. And do you know whether that gathering system was either entirely, or in large part, relaid and re-arranged?

A. It was.

Q. At whose expense?

A. The Southern Gas Company.

Q. And what money was the South Texas out of pocket by reason of that arrangement?

A. At that time?

Q. Yes.

A. None.

Q. What company made an additional investment by reason of that arrangement?

A. The Southern Gas Company.

Q. Now, has that contract remained in effect since that time?

A. Yes.

Q. And you have had a good deal of experience, have you not, Mr. Abernathy, in making contracts to secure a supply of gas to a transmission line?

A. Yes.

Q. And from your knowledge of all the circumstances [fol. 208] and facts surrounding the making of this contract at the time it was made, what in your opinion and judgment as a practical operating man—will you state your judgment as a practical operating man as to whether or not that contract, from the point of view of the Southern Gas Company, was a provident or improvident contract?

A. From the standpoint of which Company?

Q. The South Texas Gas Company.

A. In my opinion it was a good contract for the South Texas Gas Company.

Q. Can you give some of the main reasons on which you base that opinion?

A. Well, at that time the Carolina-Tex field as a whole was declining. The present 2200-foot sand had not been discovered. There were three producing sands at that time, I believe, and they were all declining. The South Texas Gas Company was faced with the prospect of spending a considerable sum of money in building a gathering system in the face of the declining field. By the making of this contract they did not have to spend any sum of money, and therefore had no risk in any cash they might have to put out. In case the field declined more rapidly, [fol. 209] or quit producing, they had no investment in the field which they might stand to lose.

Q. And their obligation was to pay this gathering charge in the amount that they took gas?

A. Yes.

* * * * * * *

Q. Have you made any computations to show the return to the Southern Gas Company under this contract of November 1, 1929, with the South Texas Gas Company, which has been introduced in evidence here and marked as Exhibit 7?

A. I have.

Q. Please let me have as many copies as you have.

A. All right.

Mr. Coates: We ask that this instrument be marked for identification as Defendant's Exhibit Number 8, and we offer it in evidence, and will number the pages of the exhibit now.

(Thereupon, the instrument above referred to was offered in evidence by the defendant, and marked Defendant's Exhibit No. 8. A copy of designated page thereof appears on the next following pages.)

[fol. 210] The following are pages 2129, 2132, 2133, and 2136 from S. F. Vol. IV.

[fol. 211] DEFENDANT'S EXHIBIT No. 8

Page 1

Southern Gas Company

Carolina-Texas Field

Gathering System Investment

Estimated Investment as of November 1, 1929	$25,597.00
Rearrangement Expense November and December, 1929	7,375.00
Total Investment during year 1930	$32,972.00
Additional Expense during 1930 and 1931	8,741.00
Total Expenditures by Southern Gas Company	41,713.00
Less Property Retirements	4,420.00
Net Investment 1931-1932-1933	$37,293.00

NOTE.—The additional expense of $8,741.00 was incurred during the latter part of 1930 and the early part of 1931, and for the purpose of this report — is assumed that the effective date of all these additions was January 1, 1931. Similarly, the property retirements of $4,420.00 (although these lines have not actually been removed) could have been made in 1930 and 1931 and the effective date of these detirements is also taken as January 1, 1931.

DEFENDANT'S EXHIBIT No. 8—Continued

[fol. 212] Page 4

Southern Gas Company

Computation of Gathering Charge in Carolina-Texas Field —on Basis Employed by Railroad Commission in Opinion and Order of June 13, 1933

Years 1932-1933

The expenses are based upon the opinion rendered by the Railroad Commission of Texas using as the investment the estimated investment of the Southern Gas Company in the Carolina-Texas Field gathering system. On this basis an operation charge of 10% of the investment is used as set forth in the Railroad Commission's opinion.

Investment—Years 1932-1933	$37,293.00
Operating Expenses:	
1. Return @ 7%	2,610.51
2. Reserve for depreciation @ 3%	1,118.79
3. Operation @ 10%	3,729.30
Total Operating Expenses	7,458.60

Unit Operating Expense:

Year	M. C. F. Gathered (2#—14.4#)	Expense	Cost per M. C. F.
1932	601,257	$7,458.60	$.0124
1933	503,238	7,458.60	.0148
Total 1932-1933	1,104,495	$14,917.30	$.0135

3-7-34.

DEFENDANT'S EXHIBIT No. 8—Continued

[fol. 213] Page 5

South Texas Gas Company

Gathering Lines—Carolina-Texas Field—Reproduction Cost New, Less Depreciation, Less Retirements

Estimated Reproduction Cost:

1. Cost of System as it existed on November 1, 1929	$28,646.00
2. Cost of additions made to System after November 1, 1929	8,629.00
Total Cost	$37,275.00
Less Retirements	4,420.00
	$32,855.00
Depreciated value based on 84% condition	$27,598.00

NOTE.—The condition of the gathering system is assumed to be the same as that of the pipe line from Pescadito Junction to the Carolina-Texas Field, namely, 84%.

The property retirements listed above consist of 1369 feet of 4" pipe and 4 meter stations which could have been removed during 1930 and 1931.

[fol. 214] Page 8

South Texas Gas Company

Computation of Gathering Charge in Carolina-Texas Field —on Basis Employed by Railroad Commission in Opinion and Order of June 13, 1933

Years 1932-1933

The expenses are based upon the opinion rendered by the Railroad Commission of Texas using as the investment the estimated reproduction cost, less depreciation, of the Southern Gas Company's gathering system in the Carolina-Texas Field. On this basis an operation charge of 10% of the investment is used as set forth in the Railroad Commission's opinion.

DEFENDANT'S EXHIBIT No. 8—Continued

Investment—Years 1932-1933	$27,598.00
Operating Expenses:	
1. Return @ 7%	$1,931.86
2. Reserve for depreciation @ 3%	827.94
3. Operation @ 10%	2,759.80
Total Operating Expenses	$5,519.60

Unit Operating Expense:

Year	M. C. F. Gathered (2#—14.4#)	Expense	Cost per M. C. F.
1932	601,257	$5,519.60	$.0092
1933	503,238	5,519.60	.0110
Total 1932-1933	1,104,495	$11,039.20	$.0100

3-7-34.

[fol. 215] * * * * * * *

Q. Please state what is shown on page 1 of Defendant's Exhibit No. 8?

A. Page 1 shows the estimated investment of the Southern Gas Company immediately prior to the contract of November 1, 1929, the estimated rearrangement expense at that time to connect its lines to the South Texas Gas Company, the additional expense it has incurred since that time in connecting additional wells, and the property which could be retired at this time, that is, which is not being used at this time in transporting gas, and the total net investment that the Southern Gas Company has made for the account of this contract.

Q. Now, the estimated investment as of November 1, 1929, what amount of dollars is that?

A. That is $25,597.00.

Q. And is that by the application of unit prices to the materials?

A. Yes.

Q. And the Rearrangement Expenses November and December, 1929?

A. $7,375.00.

Q. And is that an appraisal, or are those the actual figures?

[fol. 216] A. That is an appraisal—estimate.

Q. The additional estimate during 1930 and 1931?

A. $8,741.00.

Q. Is that likwise by the application of unit prices to inventory quantities?

A. Yes.

Q. And the property retirements; has that property been actually retired?

A. No, sir; it has not.

Q. What does it consist of?

A. It consists of the well lines to certain wells and the meter stations at those wells.

Q. Are those wells now producing gas?

A. They are not.

Q. Are they what is commonly termed dead wells?

A. They are, yes.

Q. And the net investment as shown on page 1 is what?

A. $37,293.00.

Q. And the note shown on the bottom of that page is in further explanation of the figures stated above?

A. Yes.

* * * * * * *

Q. And have you had a good deal of experience in putting in, operating and retiring gathering lines?

[fol. 217] A. Yes, I have had considerable.

Q. What measures the life in place of a gathering line, Mr. Abernathy?

A. The life of the well, the operating conditions of the well and the amount of gas to be taken from the well.

Q. And are you familiar in a general way with the normal life of these wells located in the Carolina-Texas field?

A. Generally speaking, yes.

Q. And what, in your judgment, is a fair and reasonable annual accrual for depreciation on gathering lines serving wells in the Carolina-Texas field?

A. Well, in my opinion the figure I have used here of ten per cent is a reasonable figure.

Q. Does that give credit for any salvage that you might get from the removal of gathering lines?

A. Yes, that takes that into account.

Q. And do you consider all salvage as a credit?

A. Yes.

* * * * * * *

Q. Turn to page 4, and explain the computation you have there, Mr. Abernathy.

A. The computation on page 4 is a computation using the same investment figure and using the amounts for return, depreciation and operating expense as suggested in the [fol. 218] order of the Railroad Commission, following the Laredo hearing.

Q. Do you mean the order of the Railroad Commission, dated June 13, 1933?

A. Yes.

Q. And entered in Gas Utility Dockets 49 and 63?

A. Yes.

Q. And have you taken these figures directly from that order?

A. Yes.

Q. And what, under that computation contained in the order of the Railroad Commission to which you have just referred—what gathering charge would be necessary for the years 1932 and 1933, and the average of those two years?

A. For the year 1932, the charge would be 1.24 cents; for the year 1933 it would be 1.48 cents, and the average for the two years would be 1.35 cents.

* * * * * * *

Q. Turn to page 5; what appears on page 5 of Defendant's Exhibit Number 8?

* * * * * * *

A. Page 5 shows the reproduction or the estimated reproduction cost new of the facilities installed by the Southern Gas Company, for gathering this gas, less the retirements and depreciated to the present estimated condition.

[fol. 219] Q. And what item on that page represents the estimated reproduction cost new, less depreciation, of the gathering lines in the Carolina Texas field, used to carry out this gathering line contract?

A. The item of $27,598.00.

Q. Well, isn't that after retirements?

A. Yes.

Q. What is the first figure?

* * * * * * *

A. The first figure is the estimated reproduction cost of the system, after it was reconstructed after the contract of November, 1929, of $28,646.00.

Q. At prices of labor and material current for what period?

A. Well, I am not certain on that point. That estimate was prepared by the engineering department.

Q. All right; what is the next item.

A. The next item is the estimated cost for the additional facilities, which have been constructed since the date of November 1, 1929, of $8,629.00.

Q. Now, what is represented by the description and the figure, less retirements?

A. That is the estimated reproduction cost of the system, less the property which could be retired at this time.

Q. And is that the property to which you have referred as being connected to dead wells?

[fol. 220] A. Yes.

Q. And what is the total reproduction cost new before deducting accrued depreciation?

A. $32,855.00.

Q. And after deducting accrued depreciation?

A. $27,598.00.

Q. And the note on the bottom of the page is in further explanation of the figures above shown?

A. Yes.

* * * * * * *

Q. And under the heading operating expenses, what per cent do you use for return?

A. Seven per cent.

Q. And what for reserve for depreciation?

A. Ten per cent.

Q. And is the gathering line maintenance and supervision and general expense the same figure shown on page 2 of Defendant's Exhibit 8?

A. Yes.

Q. And derived from the same source?

A. Yes.

Q. And what unit per M. C. F. of gas gathered for the year 1932 do you show as necessary for a seven per cent return and ten per cent reserve accrual, after payment of [fol. 221] gathering line maintenance and supervision and general expense?

A. For the year 1932?
Q. Yes.
A. .85 cent.
Q. For the year 1933?
A. 1.02 cents.
Q. And the average for the two years?
A. .93 cents.
Q. That is 93/100 of one cent?
A. Yes, .93 cent.

* * * * * * *

Q. What is shown on page 8?
A. Page 8 is a computation of the gathering charge, based on the reproduction cost new less depreciation and retirements, computed on the basis suggested in the Railroad Commission's order which I mentioned while ago.
Q. And what amount per M. C. F. of gas gathered is necessary to show a return of seven per cent and a reserve for depreciation of three per cent, after operating costs of ten per cent, as reflected by the Commission's order?
A. .92 cent.
Q. For 1933, what was it?
A. 1.1 cents.
[fol. 222] Q. And the average of the two years?
A. One cent.
Q. Exactly one cent?
A. Exactly.

* * * * * * *

Cross-examination.

Questions by Mr. Bobbitt:

Q. * * * Now, you testified about the Pescadito Junction and Jennings Junction transmission line, about these hot spots along that line, this morning. I don't know that I understood just how many of those hot spots along that line, if you know?
A. Well, I don't know the exact number.

* * * * * * *

Q. You haven't been all along the line—you just saw the end of it at Pescadito and you saw the other end of it?
A. Yes.

Q. That is the extent of your inspection?

A. I said I had been on the line. I haven't inspected it for hot spots.

Q. What you testified about the hot spots along the line and this condition of the pipe is what somebody told you?

A. Well, I know the condition of the pipe, and the work that it has been necessary to do on the line from inspection reports.

[fol. 223] Q. But you have testified that you made no personal inspection of it?

A. That is correct.

Q. There being hot spots along that line, Mr. Abernathy, and you not having made any personal inspection of that line, you don't know of your own knowledge anything about the capacity of that line to transport gas at this time, do you, of your own knowledge?

A. Yes; I know something about it.

* * * * * * *

Q. Do you know what pressure that line could stand—what gas pressure, of your own knowledge?

A. You mean at what safe working pressure the line could be operated?

Q. Yes; whether it could be operated as a practical proposition—do you know what pressure?

A. At what point?

Q. At any point. It would not be any stronger than the weakest point in the line.

A. Yes; I know approximately, yes, what would be a safe pressure on the line.

Q. What is a safe pressure on that line approximately?

A. I think you could work the line up to possibly 200 to 250 pounds.

* * * * * * *

[fol. 224] Q. What do you mean by working it up to that?

A. I mean it could be operated at those general pressures. It would possibly have some leaks in it that would have to be repaired.

Q. It its present condition?

A. I say there possibly would be some leaks occur that would have to be repaired—hot spots.

Q. You don't know the extent of the leaks, or how many?
A. No; that would be impossible.

• • • • • • •

A. D. GREENE, a witness for the defendant, being first duly sworn, testified as follows:

Direct examination.

Questions by Mr. Coates:

Q. Please state your name.
A. A. D. Greene.
Q. By whom are you now employed?
A. By the United Gas System.
Q. In what capacity?
A. As Chief Engineer.
Q. Are you Chief Engineer for the entire system?
A. Yes.
Q. Have you ever testified before in any court, Mr. Greene?
A. Not before a court, no sir.
Q. How many times have you ever testified before a Commission?
[fol. 225] A. One time.
Q. What, generally speaking, are your duties, as Chief Engineer of the United Gas System, Mr. Greene?
A. I am in charge of all the engineering work and the construction.
Q. Of the engineering work and the construction?
A. Yes, sir.
Q. State generally what character of engineering work you supervise?
A. Well, we have an estimating department, and a corrosion department; a drafting department, valuation department, distribution department, transmission department and production engineering department.
Q. To go back a minute; are you a graduate of any engineering school; Mr. Greene?
A. Yes, of the Ohio State University.
Q. With what degree?
A. Bachelor of Civil Engineering.

Q. And how long have you been engaged in the practice of your profession as an engineer?

A. Since 1919.

Q. And how long have you been connected with the character of engineering in which you are now engaged?

A. Since 1920 I have been in the oil and gas engineering work.

[fol. 226] Q. And have you been continuously engaged in doing engineering work, connected with oil and gas, since 1920?

A. Yes.

Q. You said that one of your duties and the duties of the engineering department which you supervised, is an estimating department; what do you mean by an estimating department?

A. We prepare the annual construction budget and make expenditure requisitions against the budget.

Q. During the time you have been with the United Gas System, has the United Gas System done any construction work of gas properties?

A. Yes, some very substantial quantities.

Q. What character of gas properties?

A. We have built transmission lines, gathering lines and distribution systems; gasoline plants and compressor stations.

Q. And how long have you been with the United Gas System?

A. Since the latter part of 1930.

Q. During the time you have been connected with the United Gas System, what amount of dollars, approximately, has been invested in the construction of these properties, which you have supervised?

A. I would say approximately $30,000,000.00 total.

Q. And has all that construction been carried on under your supervision?

[fol. 227] A. Yes.

Q. Now, Mr. Greene, you mentioned that the estimating department prepared the construction budget. Have you got anything to do with the preparation of that construction budget?

A. Yes, I am responsible for the preparation of the annual construction budget.

Q. What is the construction budget?

A. It contains individual budget items covering the pro-

posed construction for the ensuing year, following its preparation. It is finished about January first of each year.

Q. Now, does that contain the estimated cost of construction for each job anticipated for the ensuing year?

A. Yes, it does.

Q. Is that simply your guess about it?

A. No, sir; that is an estimate.

Q. What do you mean by an estimate?

A. I mean that the projects are carefully gone into and studied and an accurate estimate is prepared on each project.

Q. And what is the purpose of the construction budget?

A. To authorize, or rather, to make available the funds for the construction.

Q. Well, how does the construction budget effect that purpose?

A. It sets forth the quantity of money that is to be required for capital investment during the year.

[fol. 228] Q. And is the money required for capital investment during the year based on that construction budget?

A. It is, yes.

Q. Now, you say that is prepared at or before the first of the year, for the ensuing year?

A. Yes.

Q. During the year normally are the jobs set forth in the construction budget actually done?

A. Yes, usually; of course occasionally some job is omitted.

Q. And when the time comes to do a job, what do you and the engineering department do, prior to the time the construction work is begun?

A. We prepare an expenditure requisition, giving a detailed estimate of the work which is proposed.

Q. And what is contained in an expenditure requisition, Mr. Greene?

A. It is a detailed estimate, with a bill of material, and each item of the bill of material is priced out.

Q. And what does it purport to show?

A. The cost of the project.

Q. Now, as these jobs are in progress, what do you do, Mr. Greene?

A. Well, of course we very carefully follow the con-

struction work from its inception, and we prepare progress [fol. 229] reports daily and weekly on these jobs, and generally supervision of the construction is given.

Q. Now, state whether or not there is comprised in what you do in anticipation of the jobs, what is normally referred to as plans and specifications, and a bill of material?

A. We prepare the plans and specifications and a bill of material.

Q. State whether or not you furnish the engineering department's engineering supervision on those jobs?

A. We furnish the engineering supervision for those jobs.

Q. What does this report, these progress reports you have mentioned; what do they show?

A. They show the progress of the work and how much is completed as of a certain date.

Q. Do they show the costs thus far incurred during the doing of the job?

A. Yes, they usually show the labor costs and the material that has been received on the job.

Q. As those progress reports are received, what do you do with them?

A. I assemble them in a report which is mailed to the executives of the company

Q. And do you check them against any items?

A. Yes, we check them very carefully each week.

[fol. 230] Q. Against what?

A. Against the estimate.

Q. And when the job is finally completed, what do you do?

A. Prepare a cost analysis.

Q. What does that cost analysis reflect?

A. It reflects both the estimated cost and the actual cost that was incurred in the construction.

Q. And is that prepared by you or under your supervision?

A. Yes, it is.

Q. And what comparison do you make between the estimated cost and the cost analysis of the completed job?

A. We make a comparison on each job.

Q. Now, has this same character of procedure been going on ever since you were with the company?

A. Yes.

Q. And have you estimated the cost of and received

progress reports on and checked the actual against the estimated on approximately $30,000,000.00 of work?

A. We have, yes.

Q. Now, who is personally responsible for the accuracy of these construction cost estimates, Mr. Greene?

A. I am personally responsible for their accuracy.

Q. Don't you put in those estimates a sufficient amount, so that you are sure not to go above them?

[fol. 231] A. No, sir; I try to put in the correct amount.

Q. Why don't you put in an amount for safety there?

A. Well, in case a project is estimated too high, it might result in the project never being developed, for the reason that it would not show a sufficient return.

Q. And what other reason?

A. Well, because I would not want an estimate, when checked out with the actual costs, to be incorrect.

Q. And what, with reference to the provision of the money?

A. The budget is prepared on that basis, and covers, or our estimates govern the amount of money provided for.

Q. Suppose you over-estimated each one of these jobs; that is, your estimate is in excess of what the actual cost is. What has happened then?

A. Well, we would have too much money for the jobs.

Q. Suppose you under-estimate the cost of any particular job?

A. In that case we would have to get a budget amendment to get sufficient money to complete the work.

Q. Now, Mr. Green, based on this experience with the United Gas System, and your prior experience, do you feel that you can estimate with a reasonable degree of accuracy, the costs of a gas property?

A. Yes, I do.

Q. What makes you think so?

[fol. 232] A. From comparison of the estimated costs with the actual costs on $30,000,000.00 worth of work.

Q. Now, when the company came to value its property serving Laredo, did the company's predecessor in title have a complete and up to date inventory of that property?

A. No, sir, they did not.

Q. Was such an inventory made?

A. Yes, it was made.

Q. By whom?

A. By the engineering department, under my supervision.

Q. And of what did that inventory consist?

A. It consisted of an accurate count of all of the items of construction equipment located on the property, and the measurement of all the pipe lines, and a very careful inspection of the percent condition, and that about covers it.

Q. Now, the inventory of the property; what is that, in substance, Mr. Greene?

A. That is a count of the material that comprises a property.

* * * * * * * *

Q. Did you furnish a copy of the inventory to anyone?

A. Yes, we furnished a copy of the inventory to the engineers for the City of Laredo.

[fol. 233] Q. Well now, and what next did you do, in preparation for the valuation of this property?

A. We secured prices on the materials, and computed the unit costs of installation.

Q. Prior to that time, did you make any study of local construction conditions?

A. Yes, we went into the local construction conditions, also.

Q. And from what source did you secure the prices of materials?

A. From consulting our purchase orders of materials of a similar kind, and from quotations from manufacturers.

Q. And as of what date was that inventory completed?

A. The valuation was completed about July 1, 1932, and the inventory was completed some time prior to that.

Q. And have you accurate figures showing the net additions and retirements to property since that date?

A. Yes.

Q. Having obtained material costs from purchase orders, manufacturers' quotations and manufacturers' catalogs, what next did you do, Mr. Greene?

A. We made an estimate of the installation costs, and labor for installing the items.

Q. And in what form did you place—First, what are the unit costs to which you have referred. What do they consist of?

[fol. 234] A. Unit costs, as I think of them, are the costs of a lineal foot of pipe, for example, installed.

Q. And what two items make up those unit costs?

A. The two main items are the labor and material.

Q. Then, having an inventory and having made a study of the construction conditions, and having obtained the costs of material and the costs of installation, were you able to appraise the cost to reproduce the properties serving the City of Laredo?

A. Yes.

Q. And by what term do you generally refer to the costs consisting of the application of the unit costs to the inventoried quantities?

A. That is direct structural costs.

Q. Now, are there any other costs incurred in connection with building a property of this character?

A. Yes, there are additional costs.

Q. By what term do you generally refer to those costs?

A. General construction expenditures.

Q. And of what do those consist?

A. They consist of preliminary and organization expense, legal and administrative expense, taxes during construction, interest during construction, engineering and supervision.

[fol. 235] Q. And why don't you figure those costs on the basis of each foot of pipe?

A. Because those costs, apply more to the property as a whole, and they are not capable of being identified with any particular unit of pipe or construction.

Q. Now, in laying a pipe line, say a transmission line, Mr. Greene, what are the principal operations necessary which make direct construction costs?

A. You first have a preliminary survey and then the right of way is purchased and the right of way is cleared and graded and grubbed, and the pipe is hauled and strung.

Q. And how do you get that pipe there?

A. It is hauled and strung there; it is purchased, and hauled and strung. Then you have a welding and jointing cost, or dresser coupling, and ditching costs and laying costs and backfilling and cleanup and repairs to fences and so forth.

Q. Now, do your unit costs on transmission lines cover the material and installation costs incurred in each of those operations?

A. Yes.

Q. With the exception of clearing the right of way and so forth, do you have much the same costs in connection with laying distribution system mains?

A. You have in general the same classifications, yes.

[fol. 236] Q. And can you likewise give an example of the operations which enter into the direct construction costs, say, in installing a meter—a residential meter for example?

A. Yes, the meter is of course purchased and delivered to some central warehouse or stores room, and it is tested and painted and stenciled and taken to the residence at which it is to be installed, and pipe is cut and fit and the meter is installed.

Q. Mr. Greene, is there anything unusual or common only to appraisals of this character in estimating construction costs and making construction cost estimates in advance of the actual construction?

A. No sir, that is customary.

Q. Is it customary only in construction by operating companies?

A. I think it is customory for anyone to make an estimate before construction.

Q. How about contractors?

A. They always make an estimate before construction; or that is, they should always.

Q. How about contractors who are bidding on work?

A. They have estimated the amount of their bid.

Q. And what is the basis of their bid.

A. The costs; the estimated costs.

Q. Which have been estimated in advance of the time the work is actually done?

[fol. 237] A. Yes.

Q. Now, Mr. Greene, I believe you stated that in connection with making an appraisal of this property, you did certain work in connection with ascertaining its present percent condition?

A. Yes, we did.

Q. Will you outline the character of work done for that purpose?

A. In making the inventory of the city distribution system, approximately 6,000 holes were dug down to the pipe for the purpose of counting the fittings at those points and determining the condition of the pipe at those places, and after that, approximately 300 additional holes were dug on the transmission system at points previously . . .

Q. Transmission or distribution?

A. On the distribution system, at points previously designated on the map. On the transmission system, we inspected the pipe at every mile post, and also made some other inspections in places where connections were on the lines.

Q. Now, were the results of those inspections noted?

A. Yes, sir, they were noted.

Q. Both in the inventory—in the inspections made during the inventorying of the property, and these special inspections to which you referred?

[fol. 238] A. Yes, sir.

Q. And did you yourself likewise inspect this property?

A. Yes, sir.

Q. And did you analyze and study the inspection reports with respect to the condition in which the property was found?

A. Yes, sir, I did.

Q. Now, what with respect to the condition of pipes, say, laid under pavement—what was done in connection with ascertaining the condition of that pipe?

A. At every point where a line tied into a pipe that was under paving we were able to make an inspection, and at those points, in a great many places, we tunneled under the paving to find the condition of the pipe; the pipe was also inspected at some points through manholes.

Q. In other words, you did not cut any of the paving——

A. No, sir.

Q. —but you did tunnel under it?

A. Yes, sir.

Q. And inspected the condition of the pipe at the point where it went under the pavement?

A. Yes, sir.

Q. And likewise inspected the property where you could see it in manholes?

A. That is right.

[fol. 239] Q. And what with respect to the property not under ground but above ground, which you could see?

A. We inspected all of the property above ground.

Q. Mr. Greene, have you prepared in the form of an exhibit for introduction in this case an inventory and appraisal of the gas gathering, transmission, and distribution property and parts thereof used and useful to serve Laredo?

A. I have, yes, sir.
Q. Have you a copy of that instrument?
A. Yes, sir.

Mr. Coates: We ask that this instrument be marked as Defendant's Exhibit 9, for identification, and we offer it in evidence.

(Thereupon the instrument above referred to was marked Defendant's Exhibit No. 9.)

Q. Mr. Greene, as of what date does the inventory contained in Defendant's Exhibit 9 show the items of property?
A. As of the thirty-first of September, 1932.

The Court: You mean August.
The Witness: August, yes, sir.

* * * * * * *

Q. Now, what three main classifications of property are inventoried and appraised in this exhibit, Mr. Greene?
[fol. 240] A. The gathering system, the transmission system, and the distribution system.
Q. And in what order do those main classifications of property appear in the exhibit—which comes first?
A. In the exhibit the distribution system comes first, the transmission system is next, and the gathering system is last.

* * * * * * *

[fol. 241] The following are pages 2141, 2143, 2264 and 2393 from S. F. Vol. IV.

[fol. 242]

DEFENDANT'S EXHIBIT 9

United Gas Public Service Company

Property for Service Within the City of Laredo, Texas

As of 8-31-32

	Before Allocation		Allocated Portion	
	Reproduction Cost New	Reproduction Cost New Less Depreciation	Reproduction Cost New	Reproduction Cost New Less Depreciation
Gathering System Property:				
307 Rights of Way	$37	$37	$26	$26
310 Field Regulating & Measuring Station Structures	156	124	111	88
311 Other Gathering System Structures	926	689	660	491
313 Field Lines	15,200	12,616	10,836	8,994
314 Field Regulating & Measuring Station Equipment	1,737	1,440	1,238	1,027
315 Other Gathering System Equipment	1,075	853	766	594
Total Gathering System Property	$19,131	$15,739	$13,637	$11,220
Transmission System Property:				
316 Land	4,350	4,350	3,101	3,101
318 Rights of Way	12,207	12,207	8,702	8,702
320 Transmission Regulating & Measuring Station Structures	2,571	2,486	1,833	1,772
321 Other Transmission System Structures	17,359	14,177	12,375	10,107
323 Transmission System Regulating & Measuring Station Equipment	13,252	12,326	9,447	8,787
324 Transmission Line Equipment	568,097	473,662	404,996	337,674
325 Other Transmission System Equipment	3,736	2,543	2,663	1,813
353 Communication Equipment	24,825	23,583	17,698	16,812
Total Transmission System Property	$646,397	$545,334	$460,815	$388,768

DEFENDANT'S EXHIBIT 9—Continued

	Before Allocation		Allocated Portion	
Distribution System Property:	Reproduction Cost New	Reproduction Cost New Less Depreciation	Reproduction Cost New	Reproduction Cost New Less Depreciation
326 Land	$350	$350	$350	$350
329 District Regulator & Measuring Station Structures	688	612	688	612
330 Other Distribution System Structures	1,069	946	1,069	946
332 Measuring & Regulating Equipment	2,864	2,407	2,864	2,407
333 Distribution Line Equipment—Intermediate	85,588	73,627	65,714	56,531
—Low Pressure	290,822	245,156	290,822	245,156
334 Service Line Equipment	91,618	77,876	91,618	77,876
335-336 Meters and Meter Installations	67,250	57,162	67,250	57,162
337 Service Regulators	624	561	624	561
338 Other Distribution System Equipment	28,040	22,261	28,040	22,261
Total Distribution System Property	$568,913	$480,958	$549,039	$463,862
*Total Direct Structural Costs Including Land and Rights of Way	1,234,441	1,042,031	1,023,491	863,850
**Total Direct Structural Costs Excluding Land and Rights of Way	1,217,497	1,025,087	1,011,312	851,671
General Construction Expenditures:				
*Preliminary & Organization Expense	43,000	43,000	35,651	35,651
*Engineering & Supervision Expense	72,094	60,855	59,773	50,454
*Administrative & Legal Expense	48,661	41,075	40,345	34,055
Taxes During Construction	6,784	6,784	5,948	5,948
Interest During Construction	54,888	46,331	45,508	38,413
Total General Construction Expenditures	$225,427	$198,045	$187,225	$164,521
Land and Rights of Way Plus 10%	18,638	18,638	13,397	13,397
Total—Including General Construction Expenditures	$1,461,562	$1,241,770	$1,211,934	$1,029,589
Materials & Supplies in Stock—Gathering	421	421	300	300
—Transmission	3,751	3,751	2,674	2,674
—Distribution	17,732	17,732	17,116	17,116
Sub-Total	$1,483,466	$1,263,674	$1,232,024	$1,049,679
Cash Working Capital	.....	.....	21,500	21,500
Total Valuation (Exclusive of Going Concern Value)	.....	.....	$1,253,524	$1,071,179

[fol. 243] Defendant's Exhibit 9—Continued

Page 2142 of S. F. Vol. IV omitted.

[fol. 244] Laredo

General Summary—Distribution System Property

Acct.		Cost New	Depreciated
326	Land	$350	$350
329	Dist. Regulator & Measuring Station Structures	688	612
330	Other Distribution System Structures	1,069	946
332	Measuring & Regulating Equipment	2,864	2,407
333	Distribution Line Equipment—		
	Intermediate	85,588	73,627
	Low Pressure	290,822	245,156
334	Service		
	A—All except Industrial	83,393	70,884
	B—Industrial	8,225	6,992
335-336	Meters and Meter Installations (Inside City Limits)	67,250	57,162
337	Service Regulators	624	561
338	Other Distribution System Equipment		
	A—Industrial Installations	9,771	8,923
	B—Furniture & Fixtures	9,787	8,319
	C—Automotive Equipment	6,132	3,022
	E—Tools & Equipment	2,350	1,997
	Total	568,913	480,958
	D—Materials & Supplies	17,732	17,732

Defendant's Exhibit 9—Continued

[fol. 245] Pages 2144-2263 of S. F. Vol. IV omitted.

[fol. 246]

Summary

Transmission System Property

Laredo

Acct.		Cost New	Depreciated
316	Land	$4350.00	4350
318	Rights of Way	12207.00	12207
320	Transmission Regulating & Measuring Station Structures	2571.26	2486
321	Other Transmission System Structures	17359.18	14177
323	Transmission System Regulating & Measuring Station Equipment	13252.37	12326
324	Transmission Line Equipment	568097.23	473662
325	Other Transmission Line Equipment		
	A—Farm Taps	109.54	93
	C—Miscellaneous	485.10	412
	D—Furniture & Fixtures	1172.58	957
	E—Automotive Equipment	1696.15	849
	F—Tools & Equipment	272.83	232
353	General Communication Equipment	24824.73	23583
	Total	646397.97	545334
	Material & Supplies	3751	3751

[fol. 247] Pages 2265-2292 of S. F. Vol. IV omitted.

Defendant's Exhibit 9—Continued

[fol. 248]

Summary

Gathering System Property

Laredo

Acct.		Cost New	Depreciated
305	Land	37.20	37
307	Right of Way	156.10	124
310	Field Regulating & Measuring Station Structures	925.57	689
311	Other Gathering System Structures	15,199.95	12,616
313	Field Lines	1,737.15	1,440
314	Field Regulating & Measuring Station Equipment		
315	Other Gathering System Equipment		
	A—Drips	460.09	381
	B—Choke Racks	402.09	319
	C—Furniture & Fixtures	50.61	35
	D—Automotive Equipment	106.62	59
	E—Tools & Equipment	55.62	39
	Total	19,131.00	15,739
	Material & Supplies	420.93	421

[fol. 249] Page 2394, S. F. Vol. IV, to end of Defendant's Exhibit 9 omitted.

[fol. 250] Mr. Greene, as of September 1, 1932, what, in your judgment, is the total amount of direct construction costs which would be incurred at prices of labor and material current for that period in reproducing the distribution system property and parts thereof used and useful in serving gas in Laredo?

A. The distribution system property?

Q. Yes. Does that figure appear on page 4 of the Distribution System section?

* * * * * * *

A. Pardon me; I misunderstood the question. It does appear on page 4—$568,913.00.

Q. Is that exclusive of Materials and Supplies?
A. Exclusive of Materials and Supplies.
Q. Is it exclusive of Working Capital?
A. Yes, sir; exclusive of Working Capital.
Q. Is it exclusive of any General Construction Costs?
A. Yes, sir.
Q. And likewise exclusive of any items of going value?
A. Yes, sir.
Q. Does it represent the material and costs of installation—direct costs of installation which, in your judgment as an engineer, would be incurred in reproducing new as of September 1, 1932 this property?
A. It does, yes, sir.
[fol. 251] Q. Will you please state what, in your judgment, is the reproduction cost new less depreciation of this property as of September 1, 1932?
A. $480,958.00.

* * * * * * *

Q. Mr. Greene, I believe on yesterday you had completed your explanation of that portion of Defendant's Exhibit 9 dealing with distribution system property?
A. Yes, sir.
Q. Will you turn now to that section of Defendant's Exhibit 9 dealing with transmission system property and state whether or not that section in the first pages thereof contains an index and a summary sheet of the same kind as is contained in the section dealing with distribution system property?
A. It does; yes, sir.
Q. Mr. Greene, generally speaking, what transmission lines and parts thereof are valued and appraised in this section of Defendant's Exhibit 9?
A. Generally speaking, it is the line from the Laredo city gate to Pescadito Junction, from Pescadito Junction to Jennings Junction, from Pescadito Junction to Carolina-Tex., and from Aguilares to Oilton.
Q. State whether or not the index shows the pages at [fol. 252] which each classification of property is listed, described and appraised?
A. Yes, sir; it does.
Q. And state whether or not the summary sheet to this section of the exhibit reflects the cost new and the repro-

duction cost new less depreciation of each property account as reflected in the distribution section of this exhibit?

A. It does.

Q. And by use of the index and summary sheet in the same way and manner in which you use it in connection with the distribution system section may you find all of the detail and the same character of detail with respect to your appraisal of these properties as you testified to yesterday with respect to distribution property?

A. Yes, sir.

Q. And, Mr. Greene, what, in your judgment, would be the cost of material and installation at prices current as of September, 1932, to reproduce new the transmission system properties used and useful to serve Laredo? Refer now to the summary sheet.

A. The total of the direct structural cost on the reproduction new basis, $646,397.97.

Q. And on the reproduction cost new less depreciation basis?

A. Reproduction cost new less depreciation, $545,344.00.

• • • • • • •

[fol. 253] Q. And what gathering system or systems, and parts thereof, do the sections of this exhibit relating to gathering systems, cover?

A. They cover the gathering systems in the Jennings area.

Q. And where, generally speaking, are those located?

A. At the intersection—near the intersection of the Pescadito-Jennings transmission line and the Bruni to Monterrey line.

Q. Mr. Greene, why as of August 31, 1932 was any part of the gathering system which they existed in what is sometimes referred to as the East Jennings field included in this inventory and appraisal?

A. You say why was it included?

Q. Yes.

A. Because at that time these gathering lines were used and useful in supplying Laredo with gas.

Q. And do you know, from the examination of records or otherwise, whether gas was taken from that East Jennings gathering system during the year 1932, for delivery to Laredo?

A. I know that it was, yes, sir,—from the examination of records.

• • • • • • •

[fol. 254] Q. Do you know what the occasion—one particular occasion was for getting that gas in the East Jennings field?

A. Well, one particular reason was due to a blow-out in the Carolina-Tex line, as I recall it.

Q. Due to a blow-out in the Carolina-Tex line?

A. Yes, sir.

Q. Between what points, if you recall?

A. Between Pescadito and Carolina-Tex is as near as I can define the blow-out. I don't know just where it was.

• • • • • • •

Q. Turn, now, to the first large summary sheet in the exhibit, and state whether or not, Mr. Greene, that brings forward in summary form the reproduction cost new less depreciation of the gathering system property, the transmission system property, and the distribution system property.

A. Yes, sir, it does.

Q. And what are the account numbers shown on the extreme lefthand side of the page?

A. You say, what are they?

Q. Yes.

A. Those are the account numbers of the uniform classification of accounts.

Q. By the National Association?

[fol. 255] A. That is prescribed by the National Association of Railway and Public Utility Commissioners.

Q. And what appears in the next column?

A. A description of the property.

Q. And then you have a double column there, headed "Before Allocation".

A. Yes, sir; One is Reproduction—the first column is Reproduction Cost New, and the second column shows the Reproduction Cost New Less Depreciation.

Q. Direct structural costs only?

A. Contained on the summary page, all the costs are shown.

• • • • • • •

Q. Now, have you prepared in the form of an exhibit a statement showing your estimate and computation of the reproduction cost of the general construction expenditures which, in your judgment, would be incurred in constructing this property?

A. I have, yes, sir.

Mr. Coates: We ask that this instrument be marked Defendant's Exhibit 10, for identification, and we offer it in evidence. (Thereupon the document above referred to was marked Exhibit 10.)

[fol. 256] The following are typed portions from pages 2444-2451, S. F. Vol. IV.

[fol. 257] DEFENDANT'S EXHIBIT No. 10

Page 1

United Gas Public Service Company

Property for Service in the Laredo, Texas, Area

Distribution System and Field Gathering and Transmission System

Details of General and Undistributed Structural Costs

1. Construction Program:

The construction of the entire Distribution System and Transmission and Gathering System is considered as being done with an experienced construction organization.

2. Preliminary and Organization Period:

The period of preliminary and organization will be at least six months.

3. Construction Period:

(a) Period of initial field work, moving construction materials and equipment to job—1 month.

(b) Period of actual construction of main units of work —10 months.

(c) Period of clean-up, final construction, closing of accounts, and turning system over to operating forces—1 month.

Defendant's Exhibit No. 10—Continued

[fol. 258] Page 2

Preliminary and Organization Expenses

Allowance of $43,000

Expenses Provided For:

Expenditures necessary and incident to the organization of the Companies and putting them in readiness to do busines-, including:

1. Cost of preliminary engineering reports and estimates of cost, preliminary title and ownership reports, market analyses and economic surveys of territory, study and geological reports on available gas supply, estimates of probable operating expenses and revenues, and preparation of full reports on project.
   All of the above estimated at $10,000
2. Fees and payments to governments and political subdivisions thereof for the privileges of incorporation and doing business, including charters, filing fees and expenses, permit fees and expenses, franchise taxes, and cost of franchise election; also fees and expenses of registrars, transfer and local agents; also printing costs of indentures, bonds and stock, stamp taxes and recording fees.
   All of the above estimated at $8,000
3. Legal expense in connection with incorporation, organization, payment or acquisition of capital, and privileges of doing business, including advice and services in connection with capital structure, financial set-up, and opinions on all legal phases of project, drafting and obtaining corporate charters and permits, drafting all papers and attending meetings in connection therewith and with organization; also drafting stock and bond certificates, etc.; also services and opinions on property owned or to be owned by operating companies, including fees of attorneys and expenses.
   All of the above estimated at $10,000

Defendant's Exhibit No. 10—Continued

4. Salaries and expenses of owner's officials engaged in initiating, supervising, directing and assisting in the preliminary and organization work and in checking and analyzing results (or remuneration required by promoters of project together with their expenses).	
All of the above estimated at	$15,000
	$43,000

[fol. 259] Page 3

Engineering and Supervision During Construction

Allowance of $72,094.00

Expenses Provided For:

All expenditures for the services of consultants and resident engineers, draftsmen, construction superintendent, and their expenses including office expenses such as rent, light, heat, water, telephone and telegraph, automotive and personal expenses, prior to and during the period of actual construction.

This item does not include the cost of engineering services during the period of corporate organization, nor the direct charges for supervision covered by the salaries of field superintendent, foreman, inspector, timekeeper, material clerk, and construction engineer, which are assignable to specific construction.

Detail of Organization and Cost per Month

1 Sponsor Engineer	$350 per month	$350.00
1 Resident Engineer	275 per month	275.00
2 Office Engineers	250 per month	500.00
1 Field Engineer	250 per month	250.00
1 Coating Engineer	200 per month	200.00
1 General Superintendent	400 per month	400.00
1 Assistant Superintendent	350 per month	350.00
1 Chief Draftsman	200 per month	200.00
6 Draftsmen	150 per month	900.00
3 Party Chiefs	225 per month	675.00
9 Rodmen and Chainmen	125 per month	1,125.00

Defendant's Exhibit No. 10—Continued

2 Field Draftsmen	150 per month	300.00
1 Stenographer	125 per month	125.00
8 Automobile Expense	60 per month	480.00
Expenses for Sponsor Engineer, Resident Engineer, Field Engineer, Coating Engineer and Superintendent		959.00
All office rent, telegrams, telephone, prints, and miscellaneous items		500.00
Total Cost per Month—Maximum Organization		$7,589.00

[fol. 260] Page 4

Development of Expenses:

During the first month of preliminary and initial field work the organization as outlined above will function at about 80% of its maximum:

$7,589 x 80% = $6,071
$6,071 x 1 month = ... $6,071.00

During the first six months of actual construction the entire organization would be required.

$7,589 x 6 months $45,534.00

During the next three months of construction the organization could be reduced to possibly 70% of its peak, or

$7,589 x 70% = $5,312
$5,312 x 3 months $15,936.00

During the last two months of construction and clean up, the organization would be reduced to possibly 30% of its peak, or

$7,589 x 30% x 2 = ... $4,553.00

Total Engineering & Supervision During Construction $72,094.00

Defendant's Exhibit No. 10—Continued

[fol. 261] Page 5

Administration and Legal Expenses During Construction

Allowance of $48,661

Expenses Provided for and Basis of Allowance:

Salaries of General Office officials and employees and General Office expenses that will be incurred in connection with the administration, accounting and other general supervisory functions, except engineering, construction supervision, and stores expense.

All legal expenses incurred on account of construction, including advice and services in connection with drafting all legal instruments, contracts, and opinions; handling of disputes, and claims, and suits; preparation of reports; notary and other fees, etc.

Function of Organization and Monthly Cost:

1. General direction of the enterprise and formulation of policy.
2. Handle all payrolls and material accounts.
3. Distribution of all labor and material charges to standard accounting procedure.
4. Keep records by units of all charges made to job.
5. Keep detailed cost accounts of all construction.
6. Prepare all monthly reports and statement covering expenditures and progress of work.
7. Prepare special statements for bankers and trustees.

Detail of Organization and Cost per Month:

1	Administrative Head	@ $500 per mo.	$500
1	Chief Clerk	@ 250 per mo.	250
1	Asst. Chief Clerk and Price Clerk	@ 200 per mo.	200
1	Property Accountant	@ 250 per mo.	250
2	Bookkeepers	200 per mo.	400
2	Distribution Clerks	175 per mo.	350
3	Utility Clerks	150 per mo.	450
1	Paymaster	250 per mo.	250
2	Timekeeper and Payroll Clerks	125 per mo.	250
3	Stenographers and File Clerks	90 per mo.	270

Defendant's Exhibit No. 10—Continued

1 Secretary (Administrative Head & Office Manager)	125 per mo.	125
2 Stenographers and Typists	90 per mo.	180
Company Counsel and office expense		500
Claim Adjuster including expenses		200
Office rental and expenses		700
Supplies, telephone and telegraph expense		300
Automobile expense		250

[fol. 262] Page 6

Incidental and traveling expense	$300
Total per Month—Maximum Organization	$5,725

Development of Expenses:

During the first month of preliminary and incidental field work the entire organization would function at probably 50% of its maximum.

$5,725 x 50% = $2,862.50
$2,862.50 x 1 month = ... $2,862

During the first six months of actual construction the entire organization would be required—

$5,725 x 6 months $34,350

During the next 3 months of the construction period the organization could be reduced to about 50% of its maximum—

$5,725 x 50% = $2,862.50
$2,862.50 x 5 months = ... $8,587

During the last two months of construction, the organization could be reduced to about 25% of its maximum—

$5,725 x 25% = $1,431
$1,431 x 2 months = ... $2,862

Total Administration and Legal Expense During Construction	$48,661

Defendant's Exhibit No. 10—Continued

[fol. 263] Page 7

Interest During Construction

Allowance of $54,888

Interest during construction represents the loss of interest that will accure on money expended in labor and materials prior to and during the construction period in which the plant is built.

An analysis of the Company's records shows that, with money at 8% per annum, interest during construction is 3.9256% on the capital expended.

Development of Expense:

Interest during construction is taken on the sum of the following items:

Physical property—including land,
Preliminary organization expense,
Engineering and supervision expense,
Administration and legal expense,

and amounts to $54,888

[fol. 264] Page 8

Taxes During Construction

Allowance $6,784.00

Expenses Provided for:

All taxes, assessments and fees except special taxes for public improvements, levied and accrued on property owned by the Company during the construction period.

Basis for Allowance:

It is assumed that during the construction period, not less than 50% of all material entering into the construction of the plant would be taxable. The construction period

Defendant's Exhibit No. 10—Continued

being one year, the taxes during construction are as follows:

Annual Tax:

Laredo Distribution System	$8,817.45
Transmission System	4,750.88
Gathering System	0.00

Taxes During Construction:

Laredo Distribution	$4,409.00
Transmission System	2,375.00
Gathering System	0.00
Total Taxes During Construction	$6,784.00

End of Defendant's Exhibit 10.

[fol. 265] Q. Now, Mr. Greene, in the same way as Defendant's Exhibit No. 9, have you attempted to make this exhibit self-contained and self-explaining?

A. Yes, sir, I have attempted to.

Q. In the determination, Mr. Greene, of the amount of general construction expenditures or general and undistributed construction costs, what is one of the first things that you need to determine?

A. You have to determine your construction period, I would think would be the first thing.

Q. And have you had a substantial amount of experience in determining the probable time which would elapse from the time you first started to make plans and specifications on a job of constructing gas property until the time that property was completed?

A. Yes, sir, I have had considerable.

Q. And, in fact, does the Company attempt to construct its property under a fairly well defined time program?

A. Yes, sir.

Q. And have you computed and set forth in this exhibit the construction period?

A. Yes, sir, I have.

Q. And on what page of Defendant's Exhibit 10 does such statement appear?

[fol. 266] A. Page 1.

Q. On Page 1?

A. Yes, sir.

Q. And in your judgment, how long would it take to construct this property, starting with the period of initial field work and ending with the period of clean-up or final construction, closing of accounts and turning system over to operating forces?

A. One year.

Q. Now, is it your testimony that under forced construction this property could not be put in in a shorter time than that?

A. No, sir, I wouldn't say that. I think it could be.

Q. But, proceeding in an orderly manner, without either haste or delay, and proceeding in the ordinary way in which these properties are prudently and economically constructed, do you regard this construction period as reasonable?

A. It is just about the construction period that I would anticipate for the construction of a project of this kind.

Q. What is the first item of undistributed structural costs or general construction expenditures—You use those terms interchangeably, do you not, Mr. Greene?

A. Yes, sir.

[fol. 267] Q. What have you set forth in Defendant's Exhibit 10?

A. The preliminary and organization expense.

Q. And, by the way, does this show the undistributed construction costs simply for the distribution system or the transmission system, or for this entire property?

A. No, sir, these general construction expenditures have been calculated for the project as a whole, including distribution, transmission, and gathering.

Q. In other words, if this property were reproduced, do you think that the most economical way to do it would be as one general construction job?

A. Yes, sir, I think that would be the most economical way, and that is the way it would be done.

Q. Does that mean that you would simply use one construction crew?

A. We would have one construction management, yes, sir, and probably several or a good many different crews.

Q. But if you, as Chief Engineer of the United, were going to put this property in down there, you would handle it as one general construction job?

A. That is right, yes, sir.

Q. So these undistributed construction costs which you show here are those which you estimate would be incurred for the entire property, including gathering, transmission, and distribution?

[fol. 268] A. Yes, sir, that is true.

Q. And I believe you have already stated that these are costs which in their nature apply to the whole or large parts of a construction job, rather than to a foot of pipe or a measuring station or a house meter, or something of that sort?

A. Yes, sir, I stated that yesterday.

Q. What classification of undistributed structural costs does page 2 of Defendant's Exhibit 10 relate to?

A. The preliminary and organization expense.

Q. And does that exhibit set forth on page 2 the items and operations making up this character of expense and the amount of expense estimated to be incurred for each main subdivision of this character of expense?

A. Yes, sir, it does.

Q. Now, has anything been included by you in your direct construction costs for preliminary and organization expense?

A. No, sir.

Q. Turn to page 3 and state what that page and page 4 of Defendant's Exhibit 10 cover.

A. Page 3 shows our estimate of the engineering and supervision during construction, and also the detail of the organization that we would set up and the cost of this [fol. 269] organization per month; on page 4 we have shown the number of months that this organization would be functioning.

Q. Now, Mr. Greene, in estimating the amount of engineering and supervision costs,—and by the way, by supervision what do you mean—engineering supervision?

A. Yes, engineering supervision.

Q. * * * which will be incurred in a particular construction job on property to be built by United; do you proceed in this same way?

A. I do, yes.

Q. And I see you have a detail of an organization and a cost per month?

A. Yes.

Q. As of 1932, are these salaries which you show here

for your superintendent and draftsmen and field engineers and so forth the salaries that were actually being paid by United to men holding these positions?

A. Yes, the salaries that we have indicated are the salaries that we were actually paying to the men holding the positions that are indicated in the first column.

Q. And would you use men holding these positions and drawing these salaries, and would you have used them in the reconstruction of this property in 1932?

[fol. 270] A. Yes, I would.

Q. Now, Mr. Greene, is that entire engineering organization or is the full time of that engineering and supervision organization necessary to the construction of this property for the entire twelve months total construction period?

A. No, sir; I do not believe it would be necessary for the entire twelve months.

Q. And have you reflected on page 4 the proportionate amount of time for each main subdivision of the construction period?

A. Yes.

Q. The proportionate amount of time of this organization which would be required by this job for each main construction period?

A. Yes, we have. During the first month we have estimated that it would function at 80 percent, and the next six months at 100 percent, and during the next three months at about 70 percent, and the last two months at 30 percent.

Q. In other words, as the work is being completed and cleaned up, you use less and less engineers on the job?

A. Yes, that is correct.

Q. Is it universal in your experience that the major portion of the engineering work is done prior to and in the early and middle stages of a construction job?

A. Yes, it is mostly done at those times.

[fol. 271] Q. Turn to page 5, Mr. Greene, and state to what classification of undistributed structural costs that page and the following page 6 relate?

A. That is the administration and legal expense.

Q. And have you likewise set up a detail of the organization which in your experience and judgment, would function in an administrative and legal capacity in connection with this construction work?

A. Yes, I have.

Q. In so far as you show salaries in that set up, are those the salaries which you ascertained were actually paid and being paid by the company during that period?

A. Yes.

Q. And where you do not show the actual salary, the figure given is your estimate, is it?

A. Yes.

Q. And would the entire time of this organization be employed on this job for the full twelve months of construction?

A. No, sir; not the entire time for twelve months.

Q. Does page 6 reflect in the same way as for the engineering organization, the prorata part of the time of this organization which would be required on this job and be engaged in this construction job?

A. Yes, it does.

[fol. 272] Q. Now, Mr. Greene, what classification of undistributed construction costs appears on page 7?

A. That is the interest during construction.

Q. And at what per annum rate, Mr. Greene, have you computed the interest during construction?

A. At eight per cent.

Q. And will you explain briefly how you arrived at the amount shown for interest during construction on this job, and the basis or the source of your computation?

A. I used 3.92 per cent of the capital expenditure and we arrived at that by determining from analysis of about $20,000,000.00 worth of construction work we did, how much interest we actually paid on this construction.

Q. In other words, you determined the amount of interest paid on capital invested in construction materials and operations from the time the money was provided for gas properties, until the property was completed and turned to operation; is that right?

A. Yes.

Q. And the last item shown on page 8 is the item of taxes during construction?

A. Yes.

Q. And how did you arrive at that figure, Mr. Greene?

[fol. 273] A. That figure is the figure that was actually paid for taxes during the year 1932, I believe.

Q. It is based on that figure?

A. Yes.

Q. But what portion of the taxes paid during the year 1932 have you included here for taxes during construction?

A. Well, all the taxes except special taxes for public improvements.

Q. Look under the heading, Basis for Allowance, Mr. Greene.

A. Yes. It is assumed that during the construction, not less than fifty per cent of all material entering into the plant would be taxable. The construction being for one year, taxes during construction are as follows: * * *

Q. Then you have taken half of one year's taxes—that is, the taxes for the year 1932, as your allowance for taxes during construction, have you?

A. That is correct, yes.

Q. Refer once more, Mr. Greene, to Defendant's Exhibit 9, and state whether or not the five general classifications of undistributed structural costs set forth in Defendant's Exhibit 10 are likewise set forth on the summary page of Defendant's Exhibit 9?

A. They are.

Q. Under all columns shown there?

[fol. 274] A. Yes, they appear on all columns.

Q. And have you allocated these undistributed construction costs in the same way as you have allocated the direct structural costs of the property to which they pertain?

A. Yes.

Q. Now, Mr. Greene, in your actual experience, is there anything visionary or imaginary about the incurrence of costs of this character?

A. No, sir; these costs are very real.

Q. In your actual construction experience, have you ever been able to escape them?

A. No sir, we have not.

Q. And do these figures represent your best judgment as to the amount and nature of this expenditure which would be incurred if this property were reproduced in 1932?

A. They do, yes.

Q. And I believe you have stated, or if you have not stated, then please say whether the amount of these undistributed structural costs have been apportioned in the same proportion as the direct structural costs of the physical property to which they relate?

A. They have, yes.

Q. Mr. Greene, will you read into the record the total amount before allocation and after allocation, reproduction [fol. 275] cost new and reproduction cost new less depreciation of the direct and undistributed structural costs?

* * * * * * *

A. Total direct structural costs, before allocation——

Q. The total of the direct and undistributed structural costs, and so that counsel and the Court may follow what you are reading, where do those figures appear in Defendant's Exhibit Number 9?

A. On the summary page.

Q. And opposite what account description?

A. Total, including general construction expenditures.

Q. Well, does that likewise include your materials and supplies in stock?

A. No, sir; that does not.

Q. Will you read those figures which I have asked you for, including materials and supplies in stock?

A. Yes, that is under sub-total, reproduction cost new before allocation, $1,483,466.00; reproduction cost new less depreciation, $1,263,674.00

Q. And that is likewise before allocation?

[fol. 276] A. Yes, before allocation. Now, allocated portion, reproduction cost new, $1,232,024.00; and the reproduction cost new less depreciation, $1,049,679.00.

* * * * * * *

Q. And you show cash working capital for these properties I believe, in the sum of $21,500.00?

A. Yes.

* * * * * * *

Q. * * * what does the amount of cash working capital you have shown there consist of?

A. It consists of 45 days operating expenses, plus minimum bank balances.

* * * * * * *

Q. And were those figures furnished to you by the accounting department of the company?

A. Yes, they were.

Q. Now, in Defendant's Exhibit No. 9, Mr. Greene, have you included any amount for going value?

A. No, sir, I have not.

[fol. 277] (There was tendered in evidence an exhibit by the witness of going value, and was marked, for purposes of identification, Defendant's Exhibit No. 11, but all questions referring thereto were struck from the record, and discussion thereof was deferred that counsel for plaintiff might examine same before it was admitted.)

Q. Now, Mr. Greene, have you made any attempt to bring your inventory and appraisal of this property down to date?

A. Yes, I have.

Q. Down to what date?

A. Down to December 31, 1933.

Q. And why have you done that?

A. In order to bring it down to date and take into consideration the property as it exists today, and the reproduction cost new as of this date.

Q. And likewise any changes in operating conditions or property used and useful for the service of Laredo?

A. Yes.

Q. And to reflect prices current as of December 31, 1933?

A. Yes.

Q. And have you done that by a written supplement to Defendants' Exhibit No. 9?

A. Yes, I have.

Q. Have you prepared that supplement in the form of an exhibit?

A. Yes.

[fol. 278] Mr. Coates: We ask that this instrument be marked for identification, Defendant's Exhibit No. 12, and we offer it in evidence.

* * * * * * *

The Court: If there is no objection now, the exhibit will be admitted.

(Thereupon, said instrument was offered and received, marked Defendant's Exhibit Number 12.)

[fol. 279] The following is page 2458 from S. F. Vol. IV.

[fol. 280]

DEFENDANT'S EXHIBIT 12

United Gas Public Service Company

Property for Service Within the City of Laredo, Texas

As of 12-31-33

(From Sheet 1—Exhibit)	Before Allocation		Allocated Portion	
	Reproduction Cost New	Reproduction Cost New Less Depreciation	Reproduction Cost New	Reproduction Cost New Less Depreciation
Gathering System Property Including Land & Rights of Way	$2,772	$2,433	$1,890	$1,659
Gathering System Property Excluding Land & Rights of Way	2,735	2,396	1,864	1,633
Transmission System Property Including Land & Rights of Way	646,397	545,334	440,649	371,754
Transmission System Property Excluding Land & Rights of Way	629,840	528,777	429,362	360,467
Distribution System Property Including Land	568,913	480,958	543,938	459,844
Distribution System Property Excluding Land	568,563	480,608	543,603	459,509
Increase in Labor Costs due to N.R.A.—Gathering System	$251	$220	$171	$150
—Transmission System	33,307	27,961	22,705	19,061
—Distribution System	42,540	35,959	40,672	34,380
*Total Direct Structural Costs Including Land & Rights of Way	$1,294,180	$1,092,865	$1,050,025	$886,848
**Total Direct Structural Costs Excluding Land & Rights of Way	$1,277,236	$1,075,921	$1,038,377	$875,200

General Construction Expenditures				
*Preliminary and Organization Expense	$45,086	$45,086	$36,655	$36,655
*Engineering and Supervision Expense	75,612	63,695	61,472	51,812
*Administrative & Legal Expense	51,089	43,037	41,535	35,008
Taxes During Construction	6,784	6,784	5,504	5,504
Interest During Construction	57,548	48,861	46,702	39,661
Total General Construction Expenditures	$236,119	$207,463	$191,868	$168,640
Land & Rights of Way Plus 10%	$18,638	$18,638	$12,813	$12,813
Total Including General Construction Expenditures	$1,531,993	$1,302,022	$1,243,058	$1,056,653
Materials & Supplies in Stock—Gathering	$421	$421	$287	$287
—Transmission	3,751	3,751	2,557	2,557
—Distribution	17,732	17,732	16,954	16,954
Sub-Total	$1,553,897	$1,323,926	$1,262,856	$1,076,451
Cash Working Capital	.....	.....	20,867	20,867
Total Valuation (Exclusive of Going Concern Value)	.....	.....	$1,283,723	$1,097,318

[fol. 281] A. D. GREENE, recalled.

Redirect examination.

Questions by Mr. Coates:

Mr. Coates: The Defendant now offers in evidence the instrument marked Defendant's Exhibit Number 11 for identification.

The Court: Any objections to it?

Mr. Bobbitt: I don't think we have any objections, but I would like to ask the witness one or two questions.

The Court: All right.

Mr. Bobbitt: Mr. Greene, did you prepare this exhibit?

A. Yes, Sir.

Mr. Bobbitt: And all the subject-matter therein contained?

A. Yes, sir.

Mr. Bobbitt: Did you assemble that and write it?

A. Yes, sir.

(Thereupon, the instrument previously identified as Defendant's Exhibit No. 11, was offered in evidence by the Defendant, and a copy of same is shown on the pages next following:)

[fol. 282] DEFENDANT'S EXHIBIT No. 11

Pages 1-4

United Gas Public Service Company

Going Value

Gas Properties for Service Within the City of Laredo, Texas

Existence of Going Value in Laredo Properties:

A. These properties have inhering in them a substantial element of going value, because they are in connected and co-ordinated operation, being operated with a trained and efficient personnel, and the fact that the Company by continuous effort over a period of 22 years has acquired its present consumer and consumption use.

B. Natural gas is used almost universally for fuel in Laredo.

C. The number of natural gas consumers in Laredo as compared to total population is large, and as compared with the public acceptance of other forms of utility service is extremely good.

The past history of the United Gas System in Texas shows that the average time required to reach the point at which growth of local distribution becomes normal is something over three years. At this point, however, neither the number of customers nor the consumption per customer has reached saturation, nor more than approached the percent of use afterwards capable of being obtained. New customers have to be persuaded to install gas burning equipment, and attached customers induced to use gas more extensively. The number of customers attached to the Laredo property with relation to the total population, and compared with consumer use in other cities of like size and character, proves beyond a reasonable doubt that customer use has been approached, if not actually reached, and an [fol. 283] increase in customers may be obtained only through an increase in population, or development of new uses for natural gas.

Going Value Should be Added as a Separate Item:

In the appraisal of these properties the amount of going value must be added as a separate item because this element of value has not been included or taken into consideration in any other part of the appraisal.

These properties have been valued by the method of deducting existing depreciation from the present reproduction cost new, the value of the land having been taken separately. The physical elements of these properties have been inventoried and classified, and the current unit cost of every item has been applied to arrive at the total cost of the material, together with the direct cost of constructing these materials into the present natural gas gathering, transmission, and distribution properties.

The general construction expenditures, which include the preliminary and organization expenses, engineering and supervision expenses, administration and legal expenses, taxes during construction, and interest during construction, are inseparable from the construction of a property of this kind, and are an inevitable and necessary part of the cost.

They are as much construction cost as material and labor, even though they are not capable of physical identification after the completion of the construction work, and in their nature attach to the whole or large parts of the property rather than to any particular unit.

[fol. 284] Existing depreciation is then applied to all depreciable property, and to this is added cash working capital and materials and supplies on hand, to obtain the value of the mere physical elements of these properties, built and operable, but not actually operating or with customers connected or business established.

Thus far no consideration has been given to, nor has anything been included for, going value; and unless included as a separate and additional item, going value will be omitted.

Measure or Amount of Going Value:

Going value, while it does exist in these properties, is an intangible item of value. Its amount expressed in dollars cannot be calculated with precise mathematical accuracy; it therefore must be estimated. From my knowledge of the worth of properties such as those serving natural gas in Laredo as they now exist, having the elements of going value above set forth, I estimate the amount of such value to be not less than $120,000 over and above what it would cost to reproduce such physical property as is used and useful for serving the City of Laredo, at the construction cost prevailing over the last two years and prevailing today. It is my belief that if this property were turned over complete to an operating organization in all physical details, but with no business attached, it would cost at least the amount I have estimated above to develop the business, co-ordinate the operation of the property, and bring the operating personnel to its present state of efficiency and familiarity with its duties. United Gas Public Service Company has built a number of properties of this character and has gone through the period of developing the use of its gas, co-ordinating the operation of such properties, and bringing the operating personnel to a state of efficiency. It is my judgment, based on my experience and observation, that United Gas Public Service Company or any other operating gas company, would gladly pay 10% or more in [fol. 285] addition to all construction costs to obtain such

properties with business attached and developed in co-ordinated operation, and with a trained personnel thoroughly familiar with their duties.

[fol. 286] By Mr. Coates:

Q. Mr. Greene, please refer to the instrument marked for identification as Defendant's Exhibit Number 11. Now, Mr. Greene, will you please state whether or not the subject-matter of this exhibit set forth on pages 1, 2, and 3 thereof contains your statement under oath of the elements of going value which you find to exist in the Laredo property, or your opinion with reference to the addition of going value as a separate element, and your estimate of the going value in that property?

A. It does.

Mr. Coates: I believe that is all.

[fol. 287] Redirect examination.

Questions by Mr. Coates:

* * * * * * *

Q. Now, Mr. Greene, you may have answered this question; but are these unit costs which you have used here the costs which you would use in the estimate of any construction job of this character, if the property were actually to be built?

A. They are, yes, sir.

Q. And do you actually use the units and the basic material for the units in the normal course of the company's construction work?

A. Yes, sir; I might not use precisely the same units, but they are built up in exactly the same manner—that is, the estimate is based on the Laredo area.

Q. Of course, you would not use the same units for different construction conditions, but does this represent the computation, and the character of computation of units which you actually employ in planning and carrying through construction work?

A. This estimate is made almost exactly in the same manner that we prepare our construction expenditure requisitions.

Q. Which is in the greater detail,—this appraisal, Defendant's Exhibit No. 9, or your estimates for expenditure requisitions?

[fol. 288] A. About the same amount of detail.

* * * * * * *

Q. In your judgment, where you are pricing out an inventory—that is, an inventory of property which is already installed, can you come closer to estimating the actual cost than in the case of property to be installed which is not in place?

A. I think you can come closer, yes, sir.

Q. Now, in computing the cost of construction jobs which have been actually done, and the analyzed costs of which you have seen, does the actual as compared with the estimated always conform exactly, Mr. Greene?

A. No; not quite exactly.

Q. In your estimating work and in your construction cost analysis, what has been the margin of error, you might say, in the actual as compared with the estimate prior to construction?

A. In a composite of all the jobs we estimate I believe we come within two or three per cent of the correct total. However, occasionally, in a specific instance, we might miss an estimate, five or ten per cent, on a small job.

Q. Taking the overs and shorts, why the average has been within two to three per cent?

[fol. 289] A. And if any worse than that I think it is a bad estimate; and not only I, but other people think so.

Q. And other people tell you about it?

A. They certainly do.

Q. That does not mean that every job on which you have computed the cost of construction, that your actual, as against the estimated, has been within two to three per cent?

A. No; not on every job.

Q. But have you in all your engineering and construction experience ever missed an estimate as much as the difference between $1,225,000.00 and $885,000.00?

A. No, sir; I have not.

Q. Or anything like that?

A. No, sir.

Q. That is, comparison of actual against estimated?

A. That is correct.

Q. Mr. Greene, have you made a study of these properties, their nature, and location, for the purpose of ascertaining the annual reserve accrual necessary to provide for retirements and replacements of property?

A. Yes, sir.

Q. Have you made a study with respect to proper and reasonable reserve accruals with respect to gathering lines?

[fol. 290] A. Yes, sir; I have.

Q. What, in your judgment, is a proper and reasonable annual reserve accrual to set aside in a reserve for retirements and replacements to cover the retirement and replacement of gathering lines of the kind included in Defendant's Exhibit 9?

A. I think ten per cent per year of the cost.

Q. What limits the life or the usefulness in place of a gathering line?

The Court: I am positive you went over that the other day.

Mr. Coates: Yes, I believe I did, but I won't accumulate it with this witness either.

Q. Now, Mr. Greene, have you made a similar study with respect to the proper annual reserve accrual for retirements and replacements upon the transmission lines and property and equipment which are included in defendant's Exhibit No. 9?

A. Yes, sir; I have.

Q. Have you arrived at any conclusion as to a fair, proper, and reasonable annual reserve accrual for such transmission system property and equipment?

A. Yes, sir; for these particular lines I believe it should be about six per cent per year.

[fol. 291] Q. And have you made a similar study with respect to such accrual for the distribution system property and equipment?

A. Yes, sir.

Q. And what has been the result of your study in connection with that?

A. I think on the distribution about five per cent per year.

The Court: Are you about through with this witness?

Mr. Coates: Yes, sir.

Q. And, in your judgment, would reserve accruals in the percentage amounts you have named for each of these main classifications of property be necessary so as to have on hand in a reserve amounts sufficient to take care of the retirements and replacement of these items of property as those retirements and replacements occur?

* * * * * * *

A. Yes, sir; I think these amounts would be necessary.

[fol. 292] P. McDonald Biddison, a witness for the Defendant.

Direct examination.

Questions by Mr. Coates:

Q. Please state your name.

A. P. McDonald Biddison——

Q. In what business are you engaged, Mr. Biddison?

A. Consulting Engineer, specializing in natural gas and petroleum.

Q. How long have you been connected in an engineering capacity, with the natural gas and petroleum business?

A. Twenty-eight years.

Q. Will you give a statement, Mr. McDonald, of your experience in connection with those businesses?

A. My first work in natural gas began in May, 1905, at Columbus, Ohio, as draftsman on the preparation of details and plans for installations by the Kansas Natural Gas Company in Kansas. I was later engaged at the same location and under the same management as engineer by the Logan Natural Gas and Fuel Company, and became their Chief Engineer, having charge of construction and operation of compressor stations and electric plans in Ohio. In 1907 I went to Joplin, Missouri, as an engineer for Hope Engineering & Supply Company, working on estimates and [fol. 293] designs for pipe lines and compressor stations, and on estimates for sales of engines and machinery. From Joplin, Missouri, I went to Independence, Kansas, as Assistant to the Chief Engineer of the Kansas Natural Gas Company, and was occupied on construction of natural

gas compression and transmission equipment, and on the operation of those installations. In December, 1908, I went with the Columbia Gas & Electric Company, on the construction of their transmission system from West Virginia to Cincinnati. In 1910 I was with the Ohio Fuel Supply Company in Ohio, on the installation of compressing stations. In 1911 I was with the Texas Company at Port Arthur, Texas, on the installation of power equipment and reenforced concrete buildings. In 1912 I returned to the Ohio Fuel Supply Company, at Columbus, Ohio, and was associated with them until 1919. * * * During this period I was engaged largely on construction of transmission and compressing installations. During the period 1914 to 1918 I was also Consulting Engineer to the Lone Star Gas Company in Texas, advising them on the amounts of extensions required to serve their growing markets and furnishing designs for installations. From 1916 until 1919 I also had [fol. 294] supervision of gasoline production for the Ohio Fuel Oil Company in West Virginia. In 1917 and 1918 I also acted as Consulting Engineer to the United States Bureau of Mines, on was gasses. In the spring of 1919 I went to Mexico and was there engaged for two years on the designing and installation of oil lines, oil pumping stations, and off-shore oil loading stations. In the fall of 1921 I became associated with interests owning natural gas production in North Louisiana, and owning the Dallas Gas Company and the County Gas Company at Dallas, Texas. I acted as Consulting Engineer to these distributing properties until the time of their sale in 1927, and continued my connection with the producing properties in Louisiana until about the middle of 1928. During my association with these properties I estimated and reported on natural gas transmission projects from North Louisiana to all the major markets within reach of that field. Some of the projects so estimated upon were built upon the basis of my investigations and reports; some of the projects were supervised by me during their construction—either during that period or later. In 1928 I opened a consulting engineering office at Monroe, Louisiana, [fol. 295] and after making a valuation of the Fort Worth Gas Company and reporting upon a project for natural gas for Salt Lake City and Ogden, Utah, and a few minor reports, I became associated with the Southern Natural

Gas Company in the capacity of their Consulting Engineer, and so continued until the summer of 1930. I acted as their consulting engineer throughout the construction of their transmission system, from the Monroe, Louisiana, fields to Birmingham and Atlanta, Georgia, with its numerous branch lines. In the fall of 1930, I opened an office at Dallas, Texas, which office I still maintain and have been engaged since that date largely in valuations and reports for rate making purposes on natural gas properties.

Q. Mr. Biddison, are you able to state in terms of miles or approximate miles, of gas transmission lines, the extent of the gas transmission projects on which you have been engaged in a responsible capacity, either as engineer or in direct charge of construction?

A. Oh, some seven or eight thousand miles.

Q. And are you able to give a similar statement with respect to gas distribution systems?

[fol. 296] A. In terms of mileage?

Q. Yes.

A. No, I can not. I don't think I could even give it in terms of meters, because I have never at any time attempted to make a compilation of that. It would be probably in excess of 500,000 meters, though.

Q. Are you a graduate of any college?

A. I am a graduate of the Kansas State College of Agriculture & Applied Science, 1904, degree of Bachelor of Science in Electrical engineering.

Q. Mr. Biddison, are you familiar with the general location of the properties owned by the United Gas Public Service Company, transmission and distribution, which serve Laredo?

A. I am.

* * * * * * *

Q. Have you examined the inventory of the properties made, in so far as the same is summarized and contained in the appraisal by the United Gas Public Service Company, and furnished to the City of Laredo?

A. Yes, I have.

Q. Have you likewise made an examination of the instrument which has been introduced in evidence here, and marked for identification, Defendant's Exhibit No. 9?

[fol. 297] A. I did.

Q. For what purpose, Mr. Biddison?

A. For the purpose of determining whether the construction costs, including the undistributed general costs, as set out in the exhibit were in line with my own experience.

Q. And you accept the inventory quantities as contained herein as correct—you assume no responsibility for those?

A. I assume no responsibility for them, and assume they are correct; that is true.

Q. To what classification of direct and structural costs have you directed your examination, Mr. Biddison?

A. Well, in the distribution property, I have examined account 329, district regulator and measuring station structures; account 330, other distribution system structures; account 332, measuring and regulating equipment; account 333, distribution line equipment; account 334, services; accounts 335 and 336 combined, meter and meter installations; account 337 service regulators.

Q. Well, without answering the question with respect to other main classifications of property, why did you confine your examination to these property classifications which you have mentioned?

[fol. 298] A. Because they constitute by far the greater per cent of the total; I cannot give you that exact per cent exactly now, without a computation, but they constitute aproximately something like 95 per cent of the total direct structural costs of the distribution system.

Q. And what have you ascertained from your examination of the direct construction costs set forth in Defendant's Exhibit 9, and relating to these account classifications?

A. The conclusion which I have reached from my examination, was that the prices used on material were as low as the material could be purchased for as of the valuation date; that the unit costs for installation were closely in line with my own experience; that the wage rates used were lower than were being commonly paid at that time in other sections of this state for common labor, and that in general the costs of installed equipment, based on the labor rates used in the estimate were as low or lower than I would expect to estimate them in detail myself.

Q. And how do they conform, if they do conform to your idea of the actual direct construction costs which would be incurred in reproducing these particular items of property?

[fol. 299] A. I think they are very closely in line with the actual costs that would be incurred, if the same wage scales were used; if the wage scales be different from those used in the valuation estimates, the costs installed would be higher than those shown in the report.

Q. Mr. Biddison, have you made a similar examination of that Section of Defendant's Exhibit 9 dealing with transmission system property?

A. I have.

Q. And with respect to what property classifications therein shown?

A. Account 318, rights of way; account 320, transmission regulating and measuring station structures; account 321, other transmission system structures; account 323 transmission system regulating and measuring station equipment; account 324, transmission line equipment; account 353, general communication equipment.

Q. And again, why did you confine your examination principally to those account classifications, Mr. Biddison?

A. Because those classifications embrace nearly all valuable property. The amounts outside of those classifications are very small amounts.

Q. And what conclusion did you reach, based on your construction, knowledge, and experience, with respect to the appraisal figures shown in Defendant's Exhibit Num-
[fol. 300] ber 9?

A. I reach the conclusion from my investigations that the prices used in the evaluation were as low as the materials could be purchased for at the basic date; that the labor amounts were in line with my own experience very closely; that the wage scales used in the estimates were lower than actually being paid for similar work in other parts of Texas; that the total installed costs were in line with my own experience for the wage scales used, and that if a higher wage scale had been used a higher resultant cost figure for these items would have been obtained.

Q. And again, how do the appraised values reflecting direct construction costs of these property classifications conform to your judgment of the actual direct construction costs which would be incurred if this property had been reproduced as of the date shown in the appraisal?

A. If they had been reproduced as of the date shown in the appraisal, I think the cost of these items would have

been equal to or greater than the costs shown in the appraisal if the same wage scales had been paid as were used in the computations in the appraisal.

Q. Mr. Biddison, did you make any examination of De-
[fol. 301] fendant's Exhibit Number 9, with respect to gathering system property?

A. I did.

Q. And of what property classifications?

A. Account 310, Field Regulations and Measuring Station Structures; Account 313, Field Lines; Account 314, Field Regulating and Measuring Station Equipment.

Q. What conclusions did you reach from your examination and analysis of the appraisal figures reflected in Defendant's Exhibit Number 9, Mr. Biddison?

A. That the prices for materials used were as low as the materials could have been purchased for as of the date of the appraisal; that the unit costs for installation based upon the wage scales used were as low as could be expected the work could be done for, and they were in line with my own experience; that the total installed costs were in line with my experience, for the wage scales and the material prices used.

Q. Mr. Biddison, in your construction work, and your engineering work, and in your estimation of the cost of gas properties, have direct structural costs been the only costs which have been incurred?

A. Not by any means.

Q. Do you make that as a statement applying to all con-
[fol. 302] struction jobs in which you have been engaged or that you have supervised?

A. I do.

Q. What other general classification, or character of costs, if there is one, have you found to be incurred in the construction of property such as these properties are?

A. In addition to the District Structural Costs, there is a class of costs or expenses which are sometimes called Undistributed or General Costs—sometimes referred to as Collateral Construction Costs.

. . . . . .

A. This group embraces Preliminary and Organization Expense, Engineering and Supervision Expense During Construction, Administrative and Legal Expense During Construction, Taxes During Construction, and Interest Dur-

ing Construction. These subdivisions of the General and Undistributed Costs are the items of expense which are incurred, not piece-meal for each piece of property, but in general fashion for the property as a whole. They are generally carried in a firm's accounting practise as undistributed items, without any attempt to allocate them to specific pieces of property. It is true that some of these [fol. 303] items could be allocated, but there are no benefits accruing from the allocation that I can conceive of. Their incurrence is by the general organization; not by the groups handling specific properties; and in the classification of property provided for by the Uniform Classification of Accounts prescribed by various commissions and by associations of utility commissions these accounts are set up as general accounts.

Q. Now, Mr. Biddison, in your work in computing and estimating the costs of construction of a particular gas construction job, whether it be transmission or distribution, state whether or not it is your practise and your universal custom to include these costs?

A. It is.

Q. Why?

A. Because money must be provided with which to pay these costs; therefore, they must be included in the estimate on which the amount of money required is predicated.

Q. Suppose that only the amount of money was provided for the construction work, and available for the construction work, which would cover the direct construction costs; what would happen?

A. There would be no funds with which to pay for the plans and specifications, and inspection, and supervision, [fol. 304] while the job was going on. You would simply have a bunch of field superintendents out, each acting on his own initiative without knowing what to do; they would never get started under those conditions. There would be no organization with which to account for the funds provided for these general construction costs, nor to account for the material; there would be no forces with which to disburse the funds in payment for material or for labor. There would be no legal advice available to solve the difficulties that every construction organization gets into in a construction program. There would be no money to pay the interest on the funded debt that was to be

incurred, and upon failure to pay this interest a receivership would probably be in order. In other words, the job simply could not be completed, because there would be insufficient funds to care for all costs.

Q. Now, Mr. Biddison, have you examined Defendant Exhibit No. 9, with respect to the amounts of General Construction Costs therein contained?

A. I have.

Q. And have you examined Defendant Exhibit No. 10, which is a computation of those General Construction Costs?

A. I have.

Q. From your engineering and construction knowledge and experience what conclusion have you reached with re-
[fol. 305] spect to the reasonableness or not of the amount of the costs therein contained?

A. These general undistributed costs can be quite readily checked in an approximate manner on the basis of the relation which they bear in percentage to the total Direct Structural Costs. In Exhibit Number 9, the total for Preliminary and Organization Expense, Engineering and Supervision Expense, and Administrative and Legal Expense is $163,755.00. Applying to Direct Structural Costs, Including Land and Rights of Way, $1,234,441.00, the ratio is 13.3 per cent. The Interest During Construction figure is about four per cent—slightly under. The tax figure is about .55 of one per cent. The total General Construction Expenditures, shown in Exhibit 1, on the summary page, in the column Reproduction Costs New, amounts to less than 18 per cent of the total Direct Structural Costs, including Land and Rights of Way, which is a very reasonable figure, in view of the fact that the total of these costs is quite often found to run between twenty and twenty-five per cent.

Q. Now, you say "is quite often found to run"—explain that statement with respect to your own experience.

A. Well, on the Southern Natural Gas Corporation's con-
[fol. 306] struction work these general construction expenditures amounted to nearly 19 per cent of the Direct Structural Costs, and it is quite often that that ratio, instead of being 18 or 19 per cent, may be between 20 and 25 per cent of the Direct Structural Costs.

Q. Have you seen that ratio prevail in your actual experience?

A. Yes.

* * * * * * *

Q. Have you made any investigation of the property, operations, and business of the United Gas Public Service Company serving Laredo to determine whether there is any additional element of value inherent in those properties other than the direct construction costs and the general construction costs, about which you have testified?

A. Yes; I have.

Q. Please explain your answer.

A. To determine whether going value exists in a property it is necessary to know that it has business, that it is operating, that it is selling its product or service; that its product and service are in general demand and in general use; that the prospects are for a continuance of that [fol. 307] general use. And I have made enough investigation of this particular property to know that those conditions are fulfilled. The testimony given by Mr. Stein as to the number of meters in use, or the number of customers in Laredo on the gas system, as compared to the number of electric meters, water meters and telephones, shows a very wide use of gas service; in fact, a wider use in comparison to the number of consumers of electricity and of water than is usually found in a case of this sort. That means that the system is pretty well saturated as to number of available consumers, because it is the usual case that the number of water consumers in the community will exceed the number of gas consumers. Now, this system has been in operation down there since about 1910, as I recall it, when Laredo was a much smaller community that it now is. They started from nothing, and they have built up until they have, as of January 1, 1934, according to the testimony of Mr. Stein, nearly 4800 meters. The system is under the supervision of an organization manned by experts in the natural gas industry. It has its operating personnel established, and its operating routines established. Those are all elements that contribute to going. [fol. 308] value. The business is one which has been proved by experience generally, and in this particular locality to be one which will be generally accepted and used by the public.

Q. Well, Mr. Biddison, in Defendant's Exhibit Number 9, and in the Direct and General Construction Costs contained therein, have you from your examination found in the appraisal figures there any element or increment for the item "going value"?

A. No; there is no allowance in Exhibit Number 9 for going value. That exhibit embraces only the Direct Structural Costs, the General Construction Expenditures, the Materials and Supplies, and Cash Working Capital. Now, Going Concern Value is separate and distinct from those items. It is in no sense a part of them in total, or any portion of them. Going Concern Value does not begin its existence in a property as a part of the construction program, but as a part of the development program after construction.

. . . . . .

Q. And what conclusion have you reached, and what is the basis for that conclusion?

A. I think that in a property like the Laredo property that the going concern value is not less than ten per cent of the total of Direct Structural Costs and General and Undistributed Costs, which in this case have a total figure of something over $1,200,000.00. That would give a going concern value of about $120,000.00. Now, I base that conclusion upon having both bought and sold properties in [fol. 309] the past, and upon having made detailed estimates to measure going concern value in a large number of properties, in which I find that going concern value quite generally runs between ten and twenty per cent of the Direct Structural Costs and Undistributed Costs, generally.

H. L. Dickerson, Witness for Defendant.

Direct examination.

Questions by Mr. Coates:

Q. Please state your name?
A. H. L. Dickerson.
Q. By whom are you now employed, Mr. Dickerson?
A. Electric Bond & Share Company.

Q. Do you hold any official position with the United Gas Public Service Company?

A. I am a vice president and director of the company.

• • • • • • •

Q. Mr. Dickerson, are the operations of United Gas Public Service Company and its associated and affiliated companies supervised by any service organization?

A. They are.

Q. What service organization?

A. Electric Bond & Share Company.

[fol. 310] Q. Is that the company by whom you are employed?

A. It is.

Q. Can you, as briefly as possible, state the nature and extent and the kind and character of the services so rendered?

A. Yes.

Q. Will you please do so.

• • • • • • •

A. The United Gas Public Service Company operations are supervised by Electric Bond & Share Company. The services rendered by Electric Bond & Share Company cover all of the phases of operation, management and development of the properties, including accounting analyses, budgets, and forecasts, corporate matters, development programs, engineering, executive counsel and advice, factory information, financial matters, industrial development in the territories served, insurance of all kinds, merchandise and jobbing, new business, office investigations, purchasing, secretarial work, tax matters principally in connection with federal taxes; traffic and expediting shipments, and treasury department activities. Electric Bond & Share Company has been rendering this service to utilities since 1905. At the present time, it serves 77 groups of companies.

[fol. 311]

• • • • • • •

A. The services rendered cover the executive division, being the Chairman of the Board, the president, vice-presidents and their staffs, who consult on all matters of gen-

eral policy and consider and advise on specific major problems that come up in the operating problems current. The operating division of the organization follows in detail all of the operations of the company and consists of an operating sponsor who makes frequent visits to the field, assists in major problems and business and organization and personnel, and coordinates all of the services of the organization with requirements of the operating companies.

The corporate department handles law work, arrangements for credits and loans, appointment of trustees, registrars, and transfer agents; and it also handles the purchase of bonds for sinking funds, checks mortgages and contracts, franchises, permits, tax laws and pending litigation.

The engineering department, through a sponsor engineer, follows all of the additions and development and rehabilitation programs, the construction budge-s, reviews and engineering practices of the operating company, their [fol. 312] standard designs and specifications, studies and advises on operating methods and costs. The operating sponsor also spends considerable time in the field.

The treasury department hand-s the receipt, deposit and disbursement of funds for the operating companies, the receipt and safe-keeping of securities and assembles and distributes currently information to the operating company on local financial and credit conditions.

The statistical department maintains up to date information on the operating company's physical property and assembles it in standard from for the use of the executive department and for insertion in the governmental and other manuals, including the census department.

The secretarial department maintains a complete historical and corporate record of the operating companies, furnishes certified copies of minutes, records to stockholders, trustees and others.

The accounting department handles the vouchers, checks, disbursements and papers drawn on the bank accounts kept in the financial centers, reconciles bank statements, maintains stockholders lists, handles the payment of dividends, and the withholding of taxes on dividends. The accounting department, through a sponsor accountant, fol- [fol. 313] lows continuously the monthly financial and op-

erating reports of the operating companies, making comparisons of the results, assists in the installation of accounting systems, classifications of accounts, and forms of procedure.

The Budget Department is responsible for the design and operation of the budget system, followed by the operating companies; they study the operating trends, check current results against the budget, and study and advise on the financial aspects of funding and refunding operations and of reorganizations.

The Tax Department supervises all tax accounting, adjustments, and liability of the operating companues, prepares returns, makes reports and claims for abatements and refunds, reports interest on tax free bonds, confers with and attends hearings before governmental authorities on tax assessments, deficiency claims and refunds, and also follows all current tax legislation, both federal and state, and advises the operating companies as to the requirements and procedure under new laws.

The Commercial Department advises the operating companies as to sales methods and policies, sales campaigns, and special efforts for adding new customers. It also fol- [fol. 314] lows the developments in appliances for the additional utilization of gas service, and makes frequent visits to the operating companies properties. The:

Purchasing Department — arranges for quantity purchases of equipment, supplies and appliances, follows: factory production, traffic, routing, checks freight bills and refunds on freight bills and rates, and maintains a purchase exchange, to which all of the operating companies subscribe and turn in their surplus purchases and equipment for same.

The Insurance Department arranges blanket insurance contracts covering group, life, fire, liability, burglary, boiler, machinery, automotive, compensation, and other forms of risk, and also makes field surveys for fire insurance coverage through its staff of insurance engineers, and negotiates with rating bureaus as to classification of premiums, and also handles adjustments, claims and losses under these blanket policies.

* * * * * * *

Q. Mr. Dickerson, have you made studies and computations for the purpose of ascertaining the cost of this service—the cost to Electric Bond and Share Company?

A. I have.

• • • • • • •

[fol. 315] A. The cost to Electric Bond and Share Company of rendering this service is substantially eighty-five per cent of the amount due. A comparison of the cost of this service to United Gas and its subsidiaries is approximately half of what it would cost to engage independent qualified experts in their various lines to render similar service.

• • • • • • •

Q. Well, will you make a comparison between the charges made by your organization and the charges made by other similar organizations?

A. They are substantially less.

Q. And to what extent?

A. From twenty to sixty per cent less.

• • • • • • •

OFFERS IN EVIDENCE

Mr. Coates: The defendant now offers in evidence as Defendant's Exhibit Number 13 the record, including testimony and exhibits, of the proceedings before the Railroad Commission in the case of the City of Laredo, known as Gas Utilities Dockets Numbers 49 and 63, consisting of:

Book I of the transcribed testimony, being a part of the testimony heard in October, 1932;

[fol. 316] Book II of the transcribed testimony, being the remaining portion of the testimony in this hearing heard in October, 1932.

Book Number I of the Transcript of Testimony, being a portion of the testimony before the Railroad Commission heard in November, 1932;

Book Number II of the Transcript of Testimony, being the remainder of the testimony heard before the Railroad Commission in November, 1932;

Company's Exhibits, as follows; Exhibit No. 1, Exhibit No. 2, Exhibit No. 3, Exhibit No. 4, Exhibit No. 4-A, Exhibit No. 5, Exhibit No. 5-A, Exhibit No. 6, Exhibit No. 7, Exhibit No. 8.

Two instruments both marked Exhibit No. 9, one being partly hand-written and partly typewritten copy of a contract dated December 31, 1929, between the South Texas [fol. 317] Gas Company, a seller, and Compania Mexicana de Gas; and the other being a photostatic copy of a typewritten contract of three pages, being amendment to a contract between the South Texas Gas Company and Compania Mexicana de Gas, dated January 23, 1932; Exhibit No. 10, Exhibit No. 11.

City of Laredo Exhibits, as follows: Exhibit A, appraisal, Exhibit A(2), Exhibit B, Exhibit C (copy to be furnished by Mr. Lange, attorney for City of Laredo), Exhibit D, Exhibit E, Exhibit F (to be delivered by Mr. Lange, Attorney for City of Laredo), Exhibit G (to be delivered by Mr. Lange, Attorney for City of Laredo), Exhibit H, Exhibit A—Supplemental 1 (Copy to be delivered by Mr. Lange, attorney for [fol. 318] City of Laredo), Exhibit A—Supplemental 2, Exhibit I (map), Exhibit J (map), Exhibit K (map), Exhibit L.

Mr. Coates: Defendant's Exhibit No. 13 is offered in support of the allegations contained in Defendant's Answer in Subdivision "C", being the allegations with respect to defects in the Railroad Commission's order.

* * * * * * *

[fol. 319] DEFENDANT'S EXHIBIT 13

Caption

BEFORE THE RAILROAD COMMISSION OF TEXAS

Gas Utilities Docket No. 49

In re the Appeal of TEXAS BORDER GAS COMPANY, from an Ordinance of the City of Laredo, Texas

Joined and Heard With

Gas Utilities Docket No. 63

In re the Appeal of TEXAS BORDER GAS COMPANY, from the Failure and/or Refusal of the City of Laredo, Texas, to Grant it an Increase in Domestic Gas Rates

Heard October 4 to October 11, 1932—November 9 to November 14, 1932

[fol. 320] The following is from S. F. Vol. A, pp. 359-365, and consists of an excerpt from the record at the Commis-

sion hearing showing the cross-examination of the Company's witness P. M. Biddison. S. F. Vol. A is a part of defendant's Exhibit 13.

[fol. 321] Cross Examination of Company's Witness P. M. Biddison

Questions by Mr. Lange:

Q. Taking into consideration the effect of the present economic and financial depression, isn't it fair, both to the distributor and the transmitter of the gas, as well as the user, that both equally share in the situation resulting from such depression?

A. That the distributor and the transmitter share equally in it?

Q. Share equally with the user in bearing the burden of that depression.

* * * * * * *

Commissioner Thompson: The Commission will rule that we cannot, in this case, consider depressed conditions. The case has been presented on present replacement values, and that in itself takes into consideration fully the present price of the commodities that go into this system.

Mr. Lange: That is true.

Commissioner Thompson: And so we are considering today's prices, and present replacement values, and I think that is as far as we would care to go.

Mr. Lange: That is in connection with the physical values, and I am speaking now in connection with the fair rate of return as to what the rate payer is able to pay; we can support that by authority, as I say, and believe the Commission should take it into consideration in arriving at the fair rate of return. Not as to the physical value of the property, but when you get to the point of analyzing the entire record, and reaching a fair rate of return.

[fol. 322] Commissioner Thompson: I know of no way except to take the value of the property, and find out what is a fair return on that, and the law has limited us to 10 per cent; we cannot go beyond that. We can find something reasonable, perhaps, not so high, but that is the rule, and if the commmodity is too high, the business will have to go without customers.

Mr. Bobbitt: If the Commission please, it seems to us there can be no injury done unless it is through an exclusion of this testimony. If we are wrong in our view of the matter, the Commission may disregard the testimony, but if we are right, and the Commission has refused to receive the testimony, then we are denied our right——

Commissioner Thompson: As to the question of considering it, we will have to reserve decision, but as to the question of denying you that right to put it in, we will not do that.

Mr. Coates: We most respectfully insist upon our legal objections to the legal admissibility of the question.

Commissioner Thompson: We will note the objection.

Mr. Coates: May it be understood without the necessity of repeating our objection, that it goes to the entire line of testimony?

[fol. 323] Commissioner Thompson: That will be so understood.

Mr. Lange: Will you read the question to the witness?

"Q. Taking into the consideration the fact of the present economical and financial depression, isn't it fair, both to the distributor and the transmitter of the gas, as well as the user, that both equally share in the situation resulting from such depression."

Commissioner Thompson: You are asking that question as a good business policy, or as an expert opinion?

* * * * * * * *

A. I do not think it is equitable to require a utility to accept less than a fair rate of return on the value of its property and business, because its customers may be bearing the burden of a depression, for the reason that the utility will not later be allowed to earn more than a fair rate of return, and recoup the deficiency.

By Mr. Lange:

Q. Whenever that point is reached, that they are finding that they are not making a fair rate of return, if the situation is different the rate making body is at their disposition, isn't it?

A. The rate making body may, at a later date, set a fair rate of return, but the rate making body has no authority,

as I understand it, to ever grant them what would be more than a fair rate of return, and therefore, during any period when their rate of return is less than a fair rate of return, [fol. 324] they have suffered a lack of return which they can never recoup.

[fol. 325] The following is page 1765, S. F. Vol. C. S. F. Vol. C is a part of defendant's Exhibit 13. Said page 1765 is the summary sheet from the Company's reproduction cost appraisal, sponsored by the Company's witness A. D. Greene, and introduced in evidence at the Commission hearing as Company's Exhibit No. 1.

(Here follows one paster, side folio 326)

200A

[fol. 326]

COMPANY'S EXHIBIT 1

South Texas Gas Company and Texas Border Gas Company

Property for Service Within the City of Laredo, Texas

As of August 1, 1932

	Gathering System		Transmission System		Distribution System		Combined Total	
	Reproduction Cost New	Reproduction Cost New Less Depreciation	Reproduction Cost New	Reproduction Cost New Less Depreciation	Reproduction Cost New	Reproduction Cost New Less Depreciation	Reproduction Cost New	Reproduction Cost New Less Depreciation
Total Direct Structural Costs Including Land & Rights of Way	$21,048	$17,296	$474,588	$399,215	$544,971	$460,806	$1,040,607	$877,317
Total Direct Structural Costs Excluding Land & Rights of Way	$20,772	$17,020	466,326	390,953	544,721	460,556	1,031,819	868,529
General Construction Expenditures:								
Preliminary & Organization Expense	$717	$717	16,195	16,195	18,593	18,593	35,505	35,505
Engineering & Supervision Expense	1,203	985	27,152	22,764	31,174	26,375	59,529	50,124
Administrative & Legal Expense	811	665	18,327	15,365	21,041	17,801	40,179	33,831
Taxes During Construction	0	0	1,868	1,868	4,389	4,389	6,257	6,257
Interest During Construction	1,167	956	26,315	22,061	30,217	25,564	57,699	48,581
Total General Construction Expenditures	3,898	$3,323	89,857	78,253	105,414	92,722	199,169	174,298
Land & Rights of Way Plus 10%	$304	$304	9,088	9,088	275	275	9,667	9,677
Total—Including General Construction Expenditures	$24,974	$20,647	565,271	478,294	650,410	553,553	1,240,655	1,052,494
Going Concern Value	$3,122	$3,122	70,659	70,659	81,301	81,301	155,082	155,082
Cash Working Capital	342	342	7,744	7,744	16,137	16,137	24,223	24,223
Materials & Supplies in Stock	391	391	2,801	2,801	17,447	17,447	20,639	20,639
Total Valuation	$28,829	$24,502	$646,475	$559,498	$765,295	$668,438	$1,440,599	$1,252,438

[fol. 327] The following is page 2082, S. F. Vol. C. S. F. Vol. C is a part of defendant's Exhibit 13. Said page 2082 is the summary sheet of the operating statement sponsored by Company's witness H. E. Womack and introduced at the Commission hearing (as Company's Exhibit 4).

[fol. 328] COMPANY'S EXHIBIT 4

South Texas Gas Company and Texas Border Gas Company City of Laredo—Operating Statement Twelve Months Ended July 31, 1932

Operating Revenues:	
Sale of Natural Gas	
Residential Sales	$122,888.78
Commercial Sales	34,142.37
Industrial Sales	17,979.29
Government and Municipal Sales	2,256.63
Public Utility—For Fuel Sales	15,400.10
Reconnect Charges	1,857.40
Total Operating Revenues	$194,524.57
Operating Expenses:	
Production Expenses	$26,638.70
Transmission Expenses	12,557,80
Distribution Expenses	21,309.93
Utilization Expenses	462.83
Customers Expenses	16,071.76
New Business Expenses	6,790.34
General Expenses	30,069.66
Taxes	13,513.60
Total Operating expenses	$127,414.62
New Operating Revenue	$67,109.95
Allowance for Reserves	55,545.98
New Return on Appraised Value of Property	$11,563.97
Per cent Earned on Appraised Value of Property	0.92%

[fol. 329] The following is from S. F. Vol. A, pp. 663-665. S. F. Vol. A is a part of defendant's Exhibit 13, being the record in the Commission hearing.

[fol. 330] H. E. WOMACK, a witness for the Company, being first duly sworn, testified as follows:

* * * * * * *

Cross-examination.

Questions by Mr. Lange:

* * * * * * * *

Q. Mr. Womack, with reference to some of those figures we asked you to get, that you have not quite gotten together and submitted to us yet, what I want to know was your method of allocating those general office expenses in the Houston office with reference to the general expense item that you have in your exhibit.

A. Practically all of the general expenses that are not specifically to a company but are allocated, are made on the basis of the sum of gross revenues and operating expenses; does that answer you?

Q. That is the proportion that each company's operating expense and income bear to the total?

A. That's it.

Redirect Examination.

Questions by Mr. Coates:

A. Now the apportionment of that general expense between the companies on the basis of the sum of operating [fol. 331] revenues and operating expenses; that is not a method of apportionment which was adopted by you for this case?

A. It is not.

Q. Is it a method of apportionment which has been adopted and put into effect by the managing officials of the company in the exercise of their judgment in the operation of the business?

A. Yes; and I might say this: That was given considerable thought and that was arrived at, that method, as being fair and equitable to each one of the companies, and

that is the method that is used in the Houston office. I might say further that that percentage is corrected each month. The basis of the operating revenues and operating expenses for twelve months immediately preceding the month, is the method used.

Q. Now the portion of the expenses that are apportioned and allocated, as I believe you already stated, are actual out of pocket expenses, aren't they?

A. They are actual operating costs.

[fol. 332] The following consist of pp. 2168, 2171, 2196, 2297 and 2417, S. F. Vol. D. S. F. Vol. D is part of defendant's Exhibit 13. The above numbered pages are the summary and correction sheets from the appraisal, sponsored by the City's witness H. E. Elrod and introduced in evidence at the Commission hearing as City's Exhibits A and A-2.

[fol. 333] EXHIBIT A

General Summary and Allocation

	Cost New		Present Value
Gathering System	14672		11014
Transmission System	558290		392162
Distribution System	583192		478637
Total	1156154		881813
Less Land, Leases & Rights of Way	14809		14809
	1141345		867004
	22565		22565
	1118780	(75½%)	844439
Included with and incorporated in this amount as Expense of Purchase and Storage Deducted on account of being excessive	39320		29687
	1079460		814752
Allocated to Laredo 83.18% (Prorated cost of construction.)	897895	(75½%)	677711

Exhibit A—Continued

	Cost New	Present Value
Preliminary & Organization Exp., 2%	17958	17958
Engineering & Supervision, 2½%	22447	16943
Administration & Legal, 1½%	13468	10166
Taxes during Construction, ½%	4489	4489
Interest during Construction, 3½%	31426	23720
Additional Allowance for Purchase & Storage	10000	7550
83.18% Land, Rights of Way, etc.	12318	12318
83.18% Materials & Supplies	18770	18770
	1028771	789625
Working Cash		11157
Rate Base		800782

[fol. 334] Gathering System

Summary

Acct. No.		Cost of Reproduction New	Cost of Reproduction Less Depreciation
307	Rights-of-way	124	124
310	Field Regulating & Measuring Structures	239	215
311	Other Gathering System Structures	3286	2456
313	Field Lines	7257	5080
314	Field Regulating & Measuring Station Equipment	1967	1634
315	Other Gathering System Equipment		
	A—Drips	444	368
	B—Choke Racks	432	346
	C—Furniture & Fixtures	174	122

Exhibit A—Continued

Acct. No.		Cost of Reproduction New	Cost of Reproduction Less Depreciation
	D—Automotive Equipment	140	78
	E—Tools & Equipment	61	43
	Total, Except Material and Supplies	14124	10466
	Material and Supplies	548	548
	Total—Gathering System	14672	11014

[fol. 335] Transmission

Summary

	Cost New	Depr.
Acct. 316 Land	4350	4350
Acct. 318 Rights-of-way	9985	9985
Acct. 320 Transmission Regulating & Measuring Station Structures	2235	1979
Acct. 321 Other Transmission System Structures	19997	13256
Acct. 323 Transmission System Regulating and Measuring Station Equipment	11185	9692
Acct. 324 Transmission Line Equipment	481485	327394
Acct. 325 Other Transmission System Equipment		
A—Farm Taps	104	88
B—Telephone System	21806	19625
C—Miscellaneous	246	209
D—Furniture & Fixtures	1114	640
E—Automotive Equipment	1606	804
F—Tools & Equipment	248	211
Total, Except Material & Supplies	554361	383233
Material & Supplies	3929	3929
Total—Transmission System	558290	392162

Exhibit A—Continued

[fol. 336] Summary

Distribution—Laredo

Property Inside City Limits

	Cost New	Less Depr.
Acct. 326 Land	350	350
Acct. 329 District Regulator & Measuring Station Structures	727	582
Acct. 330 Other Distribution System Structures	1132	898
Acct. 332 Measuring & Regulating Equipment	2780	2297
Acct. 333 Distribution Line Equipment —Intermediate	86281	70196
Low Pressure	293285	243028
Acct. 334 Services		
A—All except Industrial	80986	64789
B—Industrial	8679	6943
Acct. 335 & 336 Meters & Meter Installations (Inside City Limits)	62201	49761
Acct. 337 Service Regulators	608	486
Acct. 338 Other Distribution System Equipment		
A—Industrial Installations	9546	8712
B—Furniture & Fixtures	10285	7824
C—Automotive Equipment	5807	2862
E—Tools & Equipment	2427	1821
Total, Except Material & Supplies	565104	460549
Acct. 338 Other Distribution System Equipment		
D—Material & Supplies	18088	18088
Total — Distribution System — Laredo	583192	478637

[fol. 337] EXHIBIT A-2

City's Exhibit A, Supplement 2

General Summary and Allocation

	Cost New		Present Value
Gathering System	$ 14,672		$ 11,014
Transmission System	558,290		392,162
Distribution System	583,192		478,637
Total	$1,156,154		$881,813
Less:—			
Land, Leases & Rights-of-way	14,809		14,809
Balance	$1,141,345		867,004
Materials & Supplies	22,565		22,565
	$1,118,780	(75½%)	$844,439
Included with and incorporated in this amount as Expense of purchase and storage deducted as being excessive	39,320		29,687
	$1,079,460	(75½%)	$814,752
Add Back Land, Leases & Right-of-way	14,809		14,809
Add for Purchase & Storage	10,000		7,550
	$1,104,269		$837,111
Allocated to Laredo 83.18%	918,531		696,309
Preliminary & Organization Expense 2%	18,371		18,371
Engineering & Supervision 2½%	22,963		17,408
Administration & Legal 1½%	13,778		10,445
Taxes During Construction ½%	4,593		4,593

Exhibit A-2—Continued

	Cost New	Present Value
Interest During Construction 3½%	32,149	24,371
83.18% Materials & Supplies	18,770	18,770
Total	$1,029,155	$790,267
Working Cash		11,157
Rate Base		$801,424
Add		9,274
		$810,698

[fol. 338] The following is from S. F. Vol. B, pp. 1026, 1027, 1120-1129, 1133-1134, 1198-1199. S. F. Vol. B is a part of defendant's Exhibit 13.

[fol. 339] HENRY E. ELROD, a witness for the City, being first duly sworn, testified as follows:

[fol. 340] Questions by Mr. Coates to Test Qualifications of Engineering Witness Elrod:

Q. Mr. Elrod, have you ever been in responsible charge of the construction of a natural gas distribution system?

A. I have not.

Q. Have you ever been connected in any responsible way with the operation of a natural gas distribution system?

A. I have not.

Q. Have you ever been in responsible charge or in a responsible position in connection with preparing plans, specifications and design of a natural gas distribution system?

A. I have not.

Q. Have you ever been in responsible charge of the operation of a natural gas transmission system?

A. I have not.

Q. Have you ever been in responsible charge of the construction of a natural gas transmission system?

A. I have not.

Q. And have you ever prepared or been in responsible charge of preparing the design and the plans and the specifications for a natural gas transmission system?

(Company objects to qualifications of witness; objection overruled.)

* * * * * * *

[fol. 341] Direct examination (resumed).

Question by Mr. Lange:

* * * * * * *

Q. Now, in connection with these items of structural overheads, I will ask you whether you have prepared an exhibit, giving your explanation of those items?

A. Yes.

* * * * * * *

Commissioner Thompson: It will be admitted as Exhibit "B".

Q. That exhibit is not very long, if the Commission please, and if you will permit I will have the witness to just read it into the record.

"In the promotion and construction of nearly every utility plant, certain costs are borne by the owner, which costs, while they have a direct bearing on, and connection with, structural costs, cannot be identified therewith in any physical form. These costs are called "Structural Overheads", generally, they are:

"(1) Preliminary & Organization Expense.

"(2) Engineering & Supervision During Construction.

"(3) Administration & Legal Expense During Construction.

[fol. 342] "(4) Taxes During Construction.

"(5) Interest During Construction.

"Taking the above items in order—

"(1) There is no question but that there were some expenses incurred in the organization of the old Border Gas Company, and in connection with the preliminary work prior to the organization thereof. The matter of preliminary work, however, as relates to the discovery and development

of a gas supply, has been eliminated by stipulation of the parties covering the price of gas to be charged at the mouth of the well. Preliminary and Organization Expense, then, is resolved into the matter of such expenses as were connected only with the organization of the Border Gas Company.

"The History of the situation is, briefly:

"While a well was being drilled for water on the Reiser Brothers' Ranch, East of Laredo, in 1908, gas was encountered and a gas well was successfully completed; subsequently, 'a considerable number of wells, approximately 29, were drilled in the Reiser fields'. What the cost of this development may have been, or the cost of the developmnt of any other field involved in this case, is of no interest here [fol. 343] for, as stated, this phase of preliminary expense has been eliminated from consideration.

"On February 18, 1909, Messrs. Reiser and Johnson, of Laredo, were granted a franchise by the City Council of Laredo to purvey gas within the City of Laredo. What, if anything, was paid for this valuable concession to use the streets and ways of the City, is nowhere disclosed, and in the absence of any proof that anything was, in fact, so paid, no allowance can be made now for same.

"Messrs. Reiser and Johnson, having two years from date of franchise to get gas into Laredo, did not undertake active operations.

"On April 2, 1910, the Border Gas Company, a Louisiana Corporation, was organized with a capital stock of $500,000. Subsequently, and before January 1, 1911, a transmission line was constructed from the Reiser field to Laredo, and the nucleus of a gas distribution system constructed within the City of Laredo. On December 23, 1910, the first gas fire was lighted in a home in the City.

"On January 1, 1911, the Border Gas Company took over the assets and assumed the liabilities of the Trustee for the properties, Mr. M. P. Cullinan.

[fol. 344] "With a developed gas supply 22 miles from the City of Laredo and a franchise to serve gas to the City of Laredo, it is not difficult to visualize the ease with which organization was affected, and in view of the comparatively short interim between the date of the franchise and the time when the properties were completed and in operation, to realize the comparatively small cost of promotion expense and costs of organization.

"Courts and commissions have rather generally allowed as much as 3% of the direct structural cost for preliminary and organization expense. In view of the stipulation referred to, and of the history as related, an allowance of 2% of such costs is believed to be adequate and fair—

"Total Structural Cost	$897,895
"Allowance, at 2%	17,958."

Q. Now, that is the first item that you have under Preliminary and Organization on page 2 of Exhibit 1?

A. Yes.

"(2) Engineering is recognized as a real and necessary charge when properly applied in view of the history of the Companies' properties.

[fol. 345] Beginning with January 1, 1911, when the said properties became an operating entity, the book value of same was $166,996.

"It is reasonable to assume that, prior to January 1, 1911, the construction of the whole of the said properties was accomplished under the direction of an engineer. Subsequent to January 1, 1911, with the exception of two independent engineering reports (one in 1912, which had to do with the gas supply, and the other in 1928, which was a valuation and gas supply report) and up to April 10, 1928, it is believed that all engineering services performed in connection with new construction (extensions) was done by the engineering staff of the Border Gas Company, and charged to Operations, in which event, the cost of such services was taken care of, currently, by the contributions of the rate payers. Such records of the Border Gas Company as have been available fail to disclose that charges for engineering services were made to Capital Account.

"The book cost of the properties of the Company, as of

"July 31, 1932	$1,183,052
"Book Cost—April 10, 1928	1,006,512
"Difference, for Engineering Fee	176,540
Book Cost—January 1, 1911	166,996
"Total cost on which engineering and supervision is chargeable	$343,536

[fol. 346] of 29% of Total Book Cost.

"Since 5% of the total direct structural costs is the usual fee for engineering and supervision, and as that portion of the properties on which a fee is chargeable is 29% of the total properties, the allowance for this item should be 29% of 5% or 1.45% of the total direct structural costs. In view of all of the above, it is thought that a liberal estimate for Engineering and Supervision is 2.5%—

"Total Structural Costs (Depreciated) 677,711
"Engineering & Supervision 2.5% ..... 16,943."

Q. That is the second item reflected on page 2 of Exhibit 1, under Structural Overheads?

A. Yes. "In view of the history of the construction of the properties under consideration as related under previous headings, it is believed that 1.5% of the total direct structural costs of the properties is an adequate allowance for Administration and Legal Expense During Construction—

"Total Structural Costs (Depreciated) 677,711
"Administration and Legal 1.5% ..... 10,166."

Q. That is the third item under Structural Overheads on page 2 of Exhibit 1?

[fol. 347] A. Yes, it is. "It has been shown that the original property of the Border Gas Company was constructed between April 10, 1910, and December 23, 1910. City and County Records do not disclose that any taxes were paid by the Company during the years 1910 and 1911, which was the construction period."

However, on January 31, 1913, the company did pay County Taxes of $8.13 on a value of $800.00 for 20 miles of line; that was in the County. For 1911, or for the year 1911, that was after the original construction period, and in the City the company rendered for 1911, and paid on April 30, 1912, $400.29 on a total valuation of $25,825.00.

Q. In connection with that, if the Commission please, we have the certified copies, and we will introduce certified copies from the Tax Collector's office.

Commissioner Thompson: All right, that will be all right. What he is reading is not in my copy here. You are testifying about the taxes the company paid?

A. Yes.

Mr. Coates: In 1911.

Commissioner Thompson: I do not quite see what that has to do with the reproduction cost new.

[fol. 348] A. Well, the company sets up an amount for taxes during construction.

Commissioner Thompson: That is in the reconstruction of a new plant. What would be considered—I think you can generally assume that taxes are going to have to be paid. In this case they did not pay them, that is what you bring out?

A. It has never been my idea of a reproduction theory that you are entitled to have any expense considered which has not been actually paid. You cannot reproduce anything which has not previously been produced.

Q. For the stenographer's identification we will introduce this.

"The balance of the properties were constructed 'piece meal' and no single element of construction required as much as one year to complete. It is believed that no taxes, whatever, were paid on any items of construction in progress, hence no allowance for Taxes During Construction should be made. In the event, however, that any taxes were paid which were not charged to operations, an arbitrary allowance of 0.5% is being made for this item—

[fol. 349] "Total Structural Costs 897,895
"Taxes During Construction 0.5% ..... 4,489."

Q. That item is the fourth item under Structural Overheads on page 2 of Exhibit 1?

A. Yes. "It is recognized that, regardless of how money is obtained, it has an earning value, and that money tied up during construction, is entitled to earn a fair return. Such a fair return is taken at 7% per annum." By fair return I do not mean the fair return in the sense of a fair return on operating property, but the interest rate that money would bear.

Q. There is a difference in the fair return on money borrowed, and the fair return on an investment?

A. Yes. "Although neither the original construction in 1910, nor any additions made to the Companies' properties since, has required as much time as one year to complete, for the purposes of this case, the period of construction is

taken, arbitrarily, at one year; hence the average time which the Companies were held out of their funds during construction was 6 months—

"Total Construction costs (Depreciated- 677,711
"Interest During Construction 3.5% ..... 23,720."

Q. That item is the fifth item under Structural Overheads on page 2 of Exhibit 1?

[fol. 350] A. Yes.

Questions by Mr. Coates for the purpose of making an objection:

Q. Now, let me ask one or two questions. According to the way I see it, Exhibit "B" is the calculation of the general structural costs, or what are sometimes called general and undistributed overhead costs, contained in Exhibit "A"?

A. Yes.

Q. And Exhibit "A" insofar as direct structural costs is concerned is a reproduction cost new appraisal as of July 31, 1932, is it not?

A. Yes.

(Company objects to Exhibit "B"; objection overruled.)

* * * * * * *

Questions by Mr. Lange:

Q. Your appraisal does not disclose any allowance for going concern value?

A. No sir.

Q. Have you made a study of that item?

A. Yes, I have.

* * * * * * *

Commissioner Thompson: * * * You say there is no going value to this outfit?

By Mr. Elrod:

A. I have found none.

* * * * * * *

[fol. 351] Cross-examination.

Questions by Mr. Coates:

Q. Now, Mr. Elrod, you call Exhibit "A", shown by the title on the cover, "Appraisal". What kind of an appraisal is this?

A. This is a reproduction appraisal.

Q. As of what date?

A. Cost new less depreciation, as of July 31, 1932.

Q. As of July 31, 1932. Now, what is your concept of a reproduction cost new less depreciation appraisal?

A. It is applying to the inventory of materials actually counted or set up, present day prices; that is, to represent the cost new of the then existing properties at the time of the appraisal.

[fol. 352] The two maps following are pp. 2464 and 2476, S. F. Vol. E. S. F. Vol. E is a part of defendant's Exhibit 13. Page 2476 was apparently prepared by the Company and was included in the record which came to the Court of Civil Appeals, Third District, from the District Court of Travis County, being marked Exhibit M.

(Here follow two photos, side folios 353 and 354)

CITY EXHIBIT

HUMBLE-COLE
[KOHLER]

CAROLINA-TEX

LAREDO

4.96 Mi
12"-1925

9.13 Mi.
8"-1910.

PESCADITO

10.49 Mi.
8"-1922.

REISER

ACUILARES 12.5 Mi.
6"-1923

OILTON

MIRANDO

MEXICAN

BRUNI

COLE

MIRANDO CITY

D U V A L

GRANDE

RIO

W E B B

26 Mi.-6"
1916.

AVIATOR

MIRANDO
VALLEY

HENNE-WINCH-FARRISS

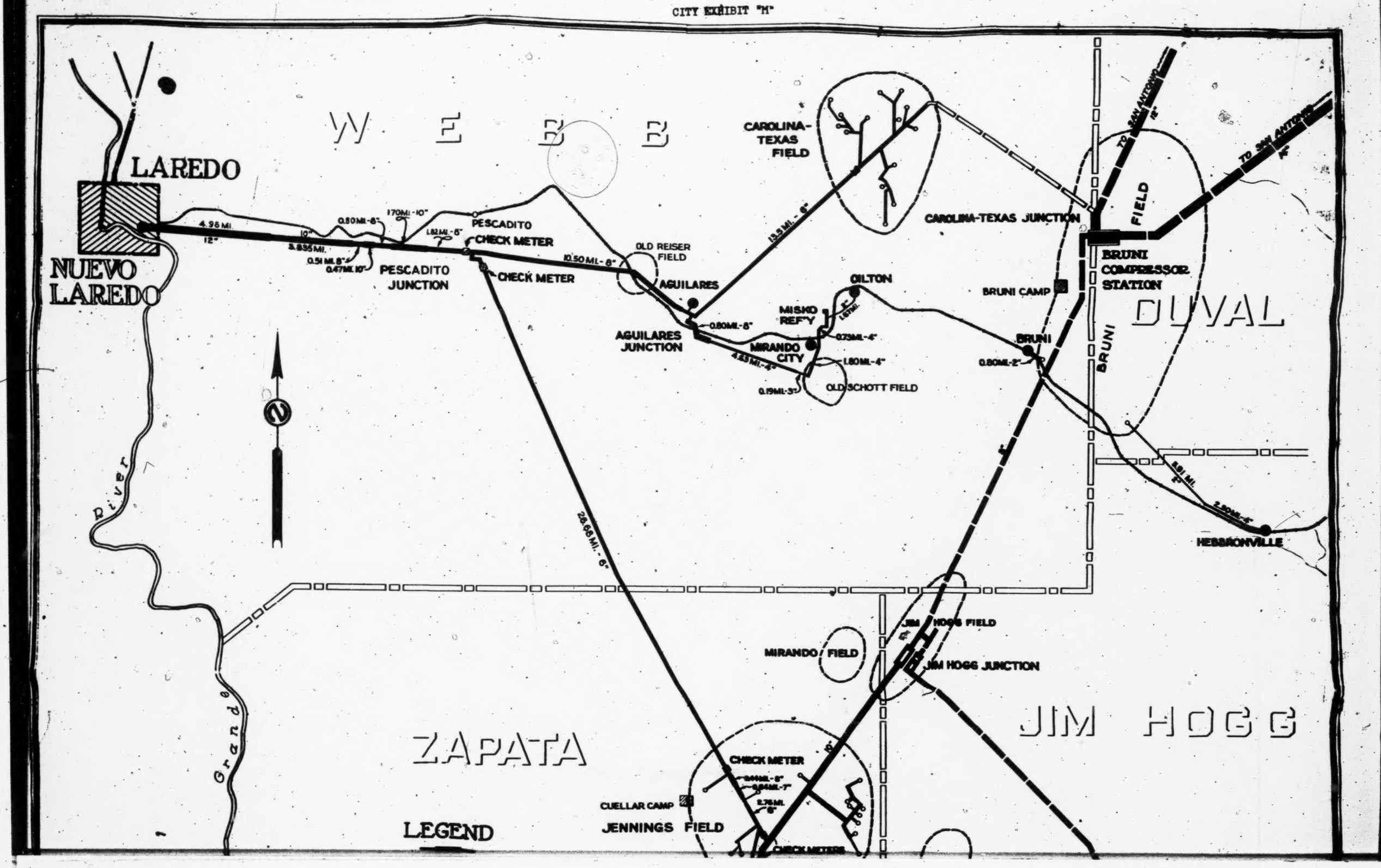
HEBBRONVILLE

Z A P A T A

J I M H O G

MAGNOLIA-JENNINGS

CITY EXHIBIT "H"



[fol. 355] The following consists of pp. 2450 and 2459, S. F. Vol. D. S. F. Vol. D is a part of defendant's Exhibit 13. Said pages are from City's Exhibit L at the Commission hearing, an accounting exhibit sponsored by and introduced in connection with testimony of the City's witness L. O. Lewis.

[fol. 356]

EXHIBIT L—PAGE 1

South Texas Gas Company and Texas Border Gas Company

Consolidated Statements of Earnings

From Operations Within the City Limits of Laredo

For the Years Ended June 30, 1929, 1930, 1931 and July 31, 1932

	Year Ended June 30			Year Ended July 31,
	1929	1930	1931	1932
Operating Revenues				
Gas Sales	$281,320.97	$319,473.23	$254,152.13	$192,349.13*
Forfeited Discounts	7,899.28	8,451.06	7,176.81	.....
Other Operating Revenues	1,485.37	1,668.51	1,663.36	2,108.96
Total Operating Revenues	$290,705.62	$329,592.80	$262,992.30	$194,458.09
Operating Expenses				
Gas Purchases	$56,132.05	$62,233.89	$50,412.75	$22,551.10
Transmission System Operations	4,473.46	8,779.63	4,727.45	3,167.15
Transmission System Maintenance	5,345.23	3,041.39	2,827.61	1,757.74
Distribution System Operations	17,515.93	19,318.45	13,701.53	11,561.46
Distribution System Maintenance	3,773.79	5,554.47	8,290.11	12,506.66
Customers' Expense	.....	.....	8,618.47	15,367.28
New Business Expense	1,872.74	3,414.56	4,035.28	4,615.33
General Office and General Exp	41,520.51	50,577.60	25,117.95	29,884.60
Taxes Other than Income Tax	10,619.67	14,341.39	15,550.53	12,738.30
Other Operating Expense	.....	.....	362.96	.....
Total Operating Expenses	$141,253.38	$167,261.38	$133,644.64	$114,149.62
Net Return Before Provision for Depreciation or Income Tax	$149,452.24	$162,331.42	$129,347.66	$80,308.47

* Includes Forfeited Discount.

[fol. 357]

EXHIBIT L—PAGE 10

South Texas Gas Company and Texas Border Gas Company

Summary of Questionable Items Contained in Consolidated Statements of Earnings from Operations in City Limits of Laredo

	Year Ended June 30,			Year Ended July 31,
	1929	1930	1931	1932
Management Fees	$7,656.27	$11,811.82	$2,220.91	$1,815.56
Loss on Bad Debts	723.30	2,138.14	1,294.80	2,874.47
Advertising	1,283.76	2,591.58	1,495.04	2,054.63
General Office Expense Pro-rated from United Gas Com.	.....	.....	9,399.93	12,389.37
Special Payrolls Prorated from United Gas Company	.....	.....	5,069.25	3,154.26
General Expense Prorated from Southern Gas Company	.....	.....	718.76	1,838.01
Maintenance of General Structures—United Gas Company	.....	.....	.....	434.42
Donations	.....	.....	.....	447.72
Testing Distribution Mains	.....	.....	.....	842.35
Laredo Rate Case Expense	.....	.....	.....	1,342.32
General Expense Prorated from United Production Co.	.....	.....	.....	153.94
Totals	$9,663.33	$16,541.54	$20,198.69	$27,347.05

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[fol. 358] The following is taken from pp. 1493-1495, 1537-1543, and 1579-1580, of S. F. Vol. B. S. F. Vol. B is a part of defendant's Exhibit 13.

[fol. 359] L. O. Lewis, a witness for the City, being first duly sworn, testified as follows:

Direct examination.

Questions by Mr. Lange:

* * * * * * *

Q. Mr. Lewis, in connection with Exhibit "L", or rather appearing in Exhibit "L" at page 10 of the exhibit, South Texas Gas Company and Texas Border Gas Company summary of questionable items contained in the consolidated statement of earnings from operations within the city limits of Laredo for the years ending June 30, 1929, 1930, [fol. 360] 1931 and the year ended July 31, 1932, then on pages 11 and 12, it shows separately South Texas Gas Company from Texas Border Gas Company as to those questionable items. The summary reflected on page 10 is the total of those reflected on pages 11 and 12?

A. That is correct.

Q. Now, how far back from July 31, 1932, does your detailed audit go; does it include the entire period beginning June 31, 1929?

A. No, the detailed audit is not in these statements; you might say it started July 1, 1930. There was some detail back of that, back to February, 1930, but inasmuch as we would not have a complete year there, some of those adjustments were not made.

Commissioner Thompson: Where you say "questionable items" what do you mean by questionable?

A. That is items that I was not sure in my mind as to the support I had for items that I was requested by the City to show separately, that they might be brought to the attention of the Commission.

Commissioner Thompson: You did not know just what to do with them?

A. Well, they are subject to some controversy, apparently.

[fol. 361] Mr. Lange: If the Commission please, we directed the auditor in connection with that particular phase

of the work to prepare for us figures as to a certain character of items, and we are frank to say that whether or not we are able to specifically tie them down, we do not know. We attempted to rivet them down as well as we could, but I do not know whether the record discloses it or not, but the City of Laredo would be unable to bear this financial burden, and we might not be able to bear it all the way through, but we have done the best we could. I do believe that with additional auditing and expense, it would have entailed a considerable expense, but we could have pared out a considerable number of items, but we had to be confined within certain limits which we could not go beyond.

Commissioner Thompson: I noted management fees here, and loss on bad debts and advertising. Do you question those items?

Mr. Lange: Yes sir, we do.

* * * * * * *

Cross-examination of L. O. Lewis.

Questions by Mr. Coates:

Q. Now, in connection with Exhibit "L" you have certain pages in there which you have styled for lack of a better name, questionable items.

[fol. 362] A. That is correct.

Q. Now, is there any doubt in your mind that each item shown under your collection of questionable items was an actual out-of-pocket expenditure, spent where it is shown to be, and expended?

A. There is no doubt in my mind but that the two companies in question actually paid these amounts.

Q And that where a questionable item is shown, as a loss, that it was determined to be a loss after every reasonable ordinary business effort to collect it.

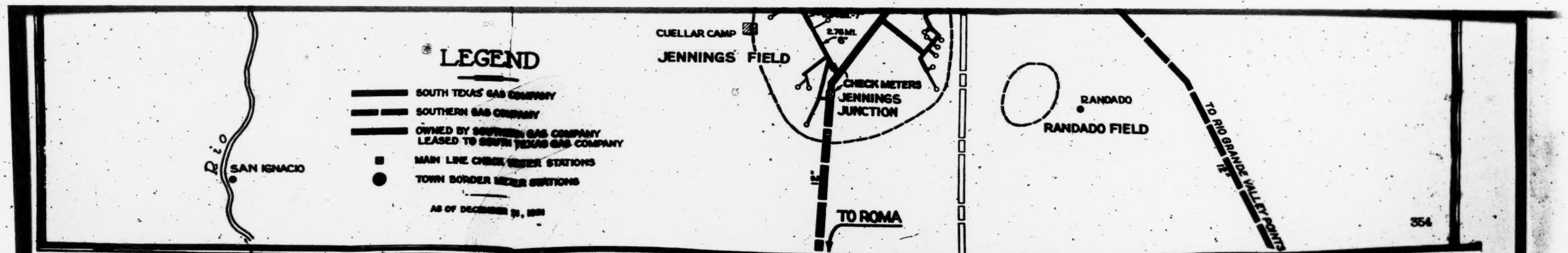
A. You mean in connection with the bad debts?

Q. Yes.

A. The figures I have here are the reserve figures as set up by the company, and from all appearances that reserve is not excessive, and during the year ended July 31, 1932, off items which had their origin in 1929 and 1930, but the figures here are the reserve set up monthly by the company.

* * * * * * *

JENNINGS
MAGNOLIA-JENNINGS
TRANSMISSION LINE
SOUTH TEXAS GAS C
USED AND USEFUL
IN SERVING LAREE
FEB. 28, 1931
353


LEGEND
SOUTH TEXAS GAS COMPANY
SOUTHERN GAS COMPANY
OWNED BY SOUTHERN GAS COMPANY
LEASED TO SOUTH TEXAS GAS COMPANY
MAIN LINE CHECK METER STATIONS
TOWN BORDER METER STATIONS
AS OF DECEMBER 31, 1951
Rio
SAN IGNACIO
CUELLAR CAMP
JENNINGS FIELD
2.75 MI.
CHECK METERS
JENNINGS
JUNCTION
TO ROMA
RANDADO
RANDADO FIELD
TO RIO GRANDE VALLEY POINTS
354

Q. You would not expect all the uncollectibles or bad debts for the period ending July 31, 1932, to be determined as at July 31, 1932, would you?

A. No sir, that would be impossible, because the large per cent of those accounts were not even due at that time.

[fol. 363] Q. I believe you have already stated, or perhaps only suggested that in connection with page 12 of the Exhibit "L" you gave the most careful attention, there, so far as so-called questionable items are concerned, to the year ended July 31, 1932?

A. Well, the last two years of the exhibit.

Q. The last two years of the exhibit?

A. Yes.

Q. And that a good many, if not all, of the same character of items as you have shown for the period ending in 1931, and the period ending in 1932, likewise appears in the period ending in 1929 and 1930, respectively?

A. I will not say that all of them occurred, but during those two years I note that they included in the payroll set up of these two companies, an amount set up which was paid to the United Gas, and I have not attempted to segregate that amount of payroll because I did not make a detailed investigation of the two years. As to the general office expense prorated there has been a change in the classification and manner of handling these items so that now expenses which would formerly have been charged as general payroll are now under the classification of general office prorated.

[fol. 364] Q. Is it your understanding that the United Gas System as now set up is composed of the properties formerly owned by a great many separate corporations?

A. Yes, there were quite a number of separate corporations.

Q. And each such separate corporations generally speaking had its own complete operating organization?

A. I cannot testify, Mr. Coates, to any of the other corporations except these two.

Q. And do the accounts and your investigation of the accounts indicate that an attempt has been made to more or less integrate and unify the operations which are capable of integration and unification?

A. The attempt has been and is being made to get all these companies as nearly as possible into one operating unit.

Q. And where each company may have had its own managing or executive officer before, the attempt has been made

specially in the last two year period, to have one executive handle in his particular capacity as many companies as possible?

A. That has been done, yes.

Q. And where there may have been separate engineers giving their entire time to one company before, an attempt has been made to have the general engineering department [fol. 365] handle as nearly as possible the engineering work for the properties of all the former constituent companies?

A. I suppose that is true, Mr. Coates. Of course I do not know anything about the organization of the United Gas Public Service Company, but I do know that company performs services in the way of engineering, and purchasing, and the general office of that company likewise serves South Texas Gas and Texas Border Gas.

Q. That carries on down to the accounting work of the two companies?

A. Yes, the general books of these two companies are kept in the general office in Houston.

Q. And carries on down, for example, through the insurance department; instead of each company placing its own insurance they group that insurance in one department and pay it out in one lump sum, do they not?

A. I don't know. There are charges for insurance that come from the general office, but I do not know the nature of the protection.

Q. That is likewise true of the new business department; they attempt to let one new business department, insofar as it can, and insofar as a general department can handle that work, do a substantial part of it?

[fol. 366] A. Yes, there are charges for new business expense which comes on the general office. You understand my testimony in connection with United Gas is my reaction to the things I have seen on these two companies.

Q. Do you happen to know whether the salary of the local manager for Texas Border Gas Company; that is, Mr. Stein, is carried on the general office payroll?

A. I do not know where it is carried. It is not on the Texas Border payroll.

Q. And you assume it is carried——

A. I assume he gets paid, yes.

Q. And a part of the legal expense is carried on the general office payroll?

A. Yes.

Commissioner Thompson: I take it from that question and answer that all the management comes from the management company?

Q. Not necessarily, no sir. These operations have been integrated and a great many services are performed by the general engineering department and accounting department, and insurance department, that were formerly performed by the local and separate companies. You could not [fol. 367] transfer all your field operations into the head office. The charges that are made are not fees, but simply allocated expense for such as hire and rent and so forth of those various departments.

Commissioner Thompson: Even the local manager; if he handles half a dozen towns he is prorated?

Q. For instance, Mr. Stein, the local manager here, has his salary carried on the general office payroll, and he handles not only Laredo but these outlying towns. The attempt has been made to have one man not only take care of a local situation but to cover as much territory as possible, and of course Mr. Stein's salary is not charged solely to Laredo, but it is prorated among these various towns.

* * * * * * *

Cross-examination of L. O. Lewis (continued).

Questions by Mr. Coates:

A. Do you want to know the exact figure at which those properties are now carried on the books?

Q. Yes.

A. I believe I can tell you. At July 31, 1932, fixed capital account, which includes the Monterrey line, and all, on the [fol. 368] books of the South Texas Gas Company, amounted to the sum of $2,098,108.96.

Q. That includes all the properties of the South Texas Gas Company?

A. All the properties of the South Texas Gas Company; the Texas Border Gas Company books show a fixed capital account in the amount $677,656.82.

Q. Now, that is the Texas Border Gas Company?

A. Yes.

* * * * * * *

[fol. 369] The following is taken from pp. 1686-1692, 1731-1732, 1734-1737, and 1750-1757 of S. F. Vol. B. S. F. Vol. B is part of Defendant's Exhibit 13. The above numbered pages are from the record showing the testimony and proceedings in the Company's rebuttal testimony at the Commission hearing.

[fol. 370] W. W. STEIN, recalled.

Direct examination.

By Mr. Coates:

Q. State your name.
A. W. W. Stein.
Q. You have already testified in this case?
A. Yes.

* * * * * * *

Q. Give a brief resume of the number of fields, giving the dates as near as you can, to which lines have been extended over the history of this company to take gas.

* * * * * * *

[fol. 371] A. In 1910 the Border Gas Company built a line from the Reiser Field about 22 miles east of Laredo into Laredo, an 8 inch line. In 1916 this field was becoming depleted, and gas was discovered in the Jennings Field. A line was then extended from what is known as Pescadito Junction to the Jennings Field. That continued to supply Laredo until shortly after 1921, when gas was found in the Mirando Valley Field.

Q. That is designated on the map as the Mirando Field?
A. Yes.

Q. And is some 10 or 12 miles northeast of the Jennings Junction?

A. Yes. The line was then extended, a 4 inch line, about 7 miles long, was extended from this 6 inch line into this field.

Q. From the Jennings Pescadito line into the Mirando Field?

A. That is right.

Q. All right, go ahead.

A. And gas was shortly afterwards discovered in the Schott Field, which is about one mile and a half south of what is now Mirando City.

Q. Now, did the Mirando Field become depleted?

A. This field became depleted about a year after the line was laid.

[fol. 372] Q. Did the Schott Field become depleted?

A. Yes, the Schott Field was discovered, and the Carolina-Tex Field was also discovered, but this line between Pescadito Junction and Aguilares, originally laid in 1910, was removed when the Pescadito-Jennings line was laid. After the Schott Field was discovered, and a number of wells were producing, a line was extended from Pescadito Junction to the old Reiser Field to Aguilares, and extended to the Schott Field in order to bring gas from the Schott Field into Laredo. In 1923, the Carolina-Tex Field was discovered, or, at least, at this time another extension was made from Aguilares into the Carolina-Tex Field, and in each case the extension was made in order to get a larger supply of gas for Laredo, or to replenish the depleted supply of the other fields.

The four inch line between the Jennings and Pescadito Junction was taken up because the Mirando Field had become depleted. The Schott Field lasted only a short time, and later this gathering line was used to carry gas into the field, and supply the Misko Refinery at Mirando City.

Q. Let me see if this is a correct summary of your testi-

[fol. 373] mony: That the first line extended was to the old Reiser Field?

A. That is right.

Q. Which was between Pescadito and Aguilares, and that that Reiser Field became depleted about 1916?

A. That's right.

Q. And the line was then extended from Pescadito to the Jennings Field?

A. That's right.

Q. And that was in 1916?

A. Yes.

Q. Then the line was extended to the Mirando Field, and when was that?

A. In 1922, I believe.

Q. Now, in the meantime the line from Pescadito to Reiser had been taken up; is that right?

A. That's right.

Q. Then when the Schott Field came in, and the line was made from Pescadito through Aguilares to and by Mirando City into the Schott Field?

A. Mirando City became built at that time, and the line came a mile south of the City into the field as a gathering line.

[fol. 374] Q. And in 1923 the Carolina-Tex Field came in, and the line was extended from Aguilares to a point in the Carolina-Tex Field?

A. That's right.

Q. Do you know any other tie-ins that have been made in the past five years for the purpose of supplying Laredo with an adequate supply of gas?

A. There was a tie-in made in 1929 between the line that was built to Monterrey and the Jim Hogg Field.

Q. Was the Monterrey line built in 1929?

A. I believe that is the year. That is my recollection of it.

* * * * * * *

Q. What was the size of the first tie-in, and if it was changed, when was it changed?

* * * * * * *

A. There was a tie-in made between the four inch line and ten inch line between Jim Hogg and Jennings Junction.

Q. And was the size of that tie-in later increased?

A. Yes.

Q. To what size line?

A. I never have seen that line.

[fol. 375] Q. Was it larger than a four inch?

A. It was larger than a four inch.

Q. Were any other tie-ins made?

A. A tie-in was made to the Carolina-Tex Field between the Southern line and the Bruni Field. This line was laid by a gathering line to take gas out of the Carolina-Tex Field into San Antonio. We made the tie-in at the northeast part of the Carolina-Tex Field at this point (indicating on map), and a tie-in and a meter station was installed at the Junction of this 8 inch line between the Carolina-Tex Field and the main line to San Antonio.

Q. Now, was that tie-in made, or do you know whether that tie-in was made for the purpose of bringing gas around to be taken to San Antonio, or for the purpose of giving an additional emergency supply to Laredo?

A. It was made primarily for the purpose of an additional emergency supply to Laredo.

Q. Why was the tie-in made down at Jennings Junction?

A. In order to provide or to bring the gas from the east Jennings Field into this 6 inch line that leads from the Jennings Field to Pescadito Junction.

Q. You were continuously connected with the Laredo properties here until about when?

[fol. 376] A. Until January 1, 1931.

Q. And at that time you were transferred by the Company over to Mississippi, were you not?

A. That's right.

Q. And came back here when?

A. In June, 1932.

Q. Now, at the time you left Laredo to go to Mississippi, from what line was the City of Laredo obtaining its gas?

A. It was obtaining its gas from this 6 inch line.

Q. You are now designating the Jennings-Pescadito line?

A. Yes, and the wells in the Jennings Field. It was also obtaining gas from the Carolina-Tex Field.

Q. During your time with the Texas Border Gas Company, and prior to the time you left Laredo to go to Mississippi, did you ever have occasion to get gas for the supply of the City of Laredo from what we have designated here as the east Jennings Field?

A. Yes, shortly after the line was completed we had several occasions the same winter to take gas from this east Jennings Field.

Mr. Lange: What winter was that, Mr. Stein?

A. The winter of 1929 and 1930.

[fol. 377] Q. That was before this rate case was ever heard of, wasn't it?

A. That's right.

* * * * * * *

Testimony of A. D. Greene, recalled.

Questions by Commissioner Thompson:

Commissioner Thompson: I do have one question. It has been developed by this testimony which you have heard

that this line down to Jennings Field was used only one or two times last winter; now, as an engineer and operating man, and I guess you are both, do you think that is good practice to have a line that costs that much money for occasional use once or twice a year?

* * * * * * *

A. Up until January 1, 1931, that line was in constant use. During the year ending with July, 1932, the sales of gas in Laredo and elsewhere were very moderate, and it was not necessary for us to rely on that line. However, we are providing to put that line into condition to use it continuously to serve Laredo in the future.

Commissioner Thompson: The point I was trying to develop was how seldom the line can be used and still be [fol. 378] considered useful and necessary, in your opinion, to keep the town from running out of gas. Now, would once a year be sufficient to justify it, or five times, or ten?

A. Of course, because it occurred only once last year I do not believe is a very good basis to estimate that on, but I think it is reasonable to have a guarantee of your gas supply into any city.

Commissioner Thompson: Have you had the experience of operating in cities where the gas ran out on cold days?

A. I have had that misfortune, yes.

Commissioner Thompson: How do the people like that?

A. They don't like it.

Testimony of M. A. Abernathy.

Direct examination.

By Mr. Coates:

Q. State your name and initials for the record.

A. M. A. Abernathy.

Q. By whom are you employed now?

A. United Gas Public Service Company.

[fol. 379] Q. In what capacity?

A. General superintendent of the transmission lines.

Q. Mr. Abernathy, you have some considerable knowledge of the gathering line contract between South Texas

Gas Company and Southern Gas Company in the Carolina-Texas Field, have you not?

A. Yes.

Q. And can you state very briefly what the situation was in the field that led to the making of that contract?

A. The situation at that time was that the South Texas Gas Company had a very small amount of production, or, rather, production from the wells which it controlled, and it needed some additional gas, and gas was available from wells controlled by the Southern Gas.

Q. And do you know what the situation was with reference to the well pressures, and so forth, on the wells of those two companies in the field prior to the time this contract was made?

A. The pressures on those wells were declining at that time.

Q. Now, you heard the testimony of Mr. Stein, did you not?

A. Yes.

Q. Does that conform with your knowledge and understanding of the transaction?

[fol. 380] A. Yes.

Q. And, in your judgment, is the contract that was made between South Texas and the Southern for the gathering line charge, is that a good contract for South Texas?

A. I think it is, yes.

Q. Is it the kind of contract that you would have made if you had been representing the South Texas Gas Company, and there had been no connection between you and the Southern Gas Company?

A. I believe it is.

Q. And would you likewise like to have some more contracts of that sort?

A. I can think of many cases where contracts of that character would be advantageous to the company.

Q. Why?

A. Because I think, in my opinion, the gathering charge set up in that contract in many cases would be less than the actual cost of the company in constructing lines, and removing them as wells become depleted, and making the necessary changes in the system.

Commissioner Thompson: In the long run that would benefit the gas users and rate payers?

[fol. 381] A. Yes.

Commissioner Thompson: Because less would have to be spent, and charged to them?

A. Yes.

By Mr. Coates:

Q. Mr. Abernathy, during the year 1932 was there any blowup or breakdown in the transmission line between Pescadito Junction and Carolina-Texas Field?

A. Yes.

Q. Was that a complete break, or did that result in a complete stoppage of gas from Carolina-Texas Field into Laredo?

A. Yes sir.

Q. Do you recall on what day that was?

A. That was on March 13th.

Q. That was a spring month, but do you know how the weather was about that time?

A. Pretty cold.

Q. Do you know whether that was one of the coldest days of the entire 12 months period?

A. It was not the coldest day, but it was one of the coldest.

* * * * * * *

[fol. 382] Q. In that connection, do you know from what source the city of Laredo received its gas at that time?

A. It got gas through the line from Jennings-Pescadito, and received part of its supply from the gas from the Bruni Field through the Jim Hogg 10 inch line, and the east Jennings gathering system.

Q. And but for those sources upon which the company could rely at that time would either all or a substantial part of the gas users in Laredo have been without gas?

A. A substantial part would have been, yes.

* * * * * * *

Testimony of Mr. Womack, recalled.

Questions by Mr. Coates:

Q. You are the same H. E. Womack that has heretofore testified in this case?

A. Yes.

Q. Mr. Womack, have you prepared an operating statement of Texas Border Gas Company and South Texas Gas Company showing operation for inside the City of Laredo only, for the period ending October, 1932?

A. For the 12 months period ending October, 1932, yes.

Q. Have you got that in the form of an exhibit?

[fol. 383] A. Yes, I have.

Q. And was that statement prepared in exactly the same manner, using exactly the same bases of allocations and all other bases as the exhibit you have heretofore introduced in this case covering the 12 months ended in July?

A. That is correct.

Q. Except that you used the 12 months ending October 1932?

A. Yes, the same methods of allocation were used.

Q. Now, Mr. Womack, in anticipation of the hearing in this case which was to come off in June of this year, did you prepare an accounting exhibit for the 12 months ended March, 1932?

A. Yes.

Q. And in substantially the same form and manner as the exhibit heretofore introduced?

A. Yes sir.

Q. And the accounting exhibits prepared for those three 12 months periods will cover what entire spread of operations in months?

A. About 19 months, I believe.

Mr. Lange: Now, if the Commission please, at the time [fol. 384] the City of Laredo made its supplementary audit, the period ending with July 31, 1932, was the final period, as we understood it.

Mr. Coates: That was by reason of the postponement in the case. You have gone back to 1910 to show a trend, but in order to show something broader than a 12 months' trend we offer these exhibits.

Mr. Lange: There could be a broader trend by taking 2 or 4 years prior to that time.

Mr. Coates: But the materiality of these things, it seems to me, is in proportion to the closeness of the date of hearing, or as close as you could get to the date of the hearing.

Commissioner Thompson: We will admit them. We are anxious to see what is going on.

Mr. Lange: That is true, but at the time the City made its last audit, as of that time, we would not have had the opportunity to come right on down to date.

Mr. Coates: Yes, you could.

Mr. Lange: This is the position. The hearing date was agreed upon as the first Monday in October, and at that time we were to complete our auditing period; we did first want to run it down through June 1931, in order to make it [fol. 385] an auditing period, and we took it up, and Mr. Coates said it should be some closer month, and we fixed on July 31st as the final month.

Commissioner Thompson: And you both agreed on that date?

Mr. Lange: Yes, and all the figures are based on that date.

Mr. Coates: The request was made as to what would be the last date in 1932 for which complete accounting data would be available for examination by the city's auditors in order to present an accounting exhibit for the hearing in October.

Mr. Lange: Yes, that's right.

Mr. Coates: And we told you July, and set up our main accounting exhibit as of that time.

Mr. Bobbitt: And at your suggestion we have completed our audit as at that date.

Mr. Coates: On our statement that that would be the last month for which full accounting data would be available?

Mr. Bobbitt: That is right.

Mr. Coates: And subsequent to that time, at the request [fol. 386] of the city, that hearing was postponed for more than a month, and during that intervening period your accountant was on our books in Houston, and there was there for him anything that he wanted to get. As a matter of fact, Mr. Bobbitt——

Mr. Bobbitt: He was working on the audit back to July 31, 1932.

Mr. Coates: He was there to work on anything he wanted to.

Mr. Lange: I believe, Mr. Coates, you will find that the agreement was this: At the time we took up the matter with you with reference to the accounting period we first suggested June 30, 1932, as the final month, and it was your

contention that it should be closer to the date of the hearing.

Mr. Coates: That is right.

Mr. Lange: And we said the hearing would probably be the latter part of September.

Mr. Coates: Yes sir.

Mr. Lange: And it was only the week following on October 4th, and on that basis we took July 31st, and the hearing date commenced only a week later from the time when we took the July 31st accounting period.

[fol. 387] Mr. Coates: Yes sir, that's right.

Mr. Lange: And there was no postponement beyond that time. The end of September for the date of the hearing was the one we had in mind at the time.

Mr. Coates: And that was the one we had in mind, and the one we presented at this hearing.

Mr. Lange: It was not postponed, was it?

Mr. Coates: After we heard them here for a week, and after Mr. Neff had been on the stand awhile, the hearing was postponed at the request of the City.

Mr. Bobbitt: It was reset for 10 days, and upon Mr. Coates suggestion of the 9th of November we agreed on that date. The agreed period of July 31st is fair to both parties; and the Commission can understand that these gentlemen have complete charge of the records, and have a complete accounting staff working all the time, and it is not fair to us to change that.

Commissioner Thompson: It would not make a material difference, would it?

Mr. Coates: Yes sir, there is a distinct downward trend.

Commissioner Thompson: Yes, but each successive 12 months period shows a downward trend. I think perhaps [fol. 388] it would work a hardship on the City to offer it.

Mr. Coates: All right, then we will not offer it. How about this period ending in March, 1932; do you object to that?

Mr. Lange: No, but I would like to see the exhibit, is all.

Mr. Bobbitt: Isn't that a duplication; don't we have it in up to March 31st?

Commissioner Thompson: Yes, I believe so.

Mr. Bobbitt: Then why go back to March and start over again?

Mr. Coates: Then if that is the desire of the Commission we will accede to your wishes.

Commissioner Thompson: Thank you very much. It is our desire.

Mr. Coates: All right, sir.

Commissioner Thompson: I think I have never seen a case where it was brought so nearly to the date of hearing, anyhow. It has been brought up to within about 30 days of the time we started.

Mr. Coates: Yes sir, that is correct. Now, the record will show that we offered to introduce in evidence the exhibit for the period ended the 12 months, ended October, 1932, and [fol. 389] that the City objected, and that the Commission stated, in view of that objection, and in fairness to all parties, and in view of the fact the city accountants had not audited this period, that the Commissioner thought it would be better not to introduce it in evidence.

Commissioner Thompson: That is right.

Mr. Lange: We also want the record to reflect the fact, Mr. Coates, that the City in bringing the audit down through July 31, 1932, did it with the understanding had with counsel of the gas company at the time, that that was the nearest accounting period prior to the date of the hearing, which would be the latter part of September, as it was then understood, and that the hearing did actually commence a few days later.

Mr. Coates: Yes, that is right.

Commissioner Thompson: All right, if that is all with the witness, we will excuse Mr. Womack.

(Witness excused.)

Mr. Coates: The petitioners in this case rest their rebuttal testimony.

Mr. Lange: The City of Laredo has no further testimony. [fol. 390] Mr. Coates: At this time we want to renew in the form of a motion, a prayer which is already contained in the petition, namely, and that prayer covers two things: First, that the findings of the Commission be separate findings on each separate principal item of property in issue in this case; and second, that the Commission proceed something along the lines of a Federal master in equity, and also along the lines that the Interstate Commerce Commission proceeds; that is, file what the Interstate Commerce Commission calls a proposed report, and give each party a reasonable time to prepare its exceptions to it, and after that then prepare its final opinion and decision.

Mr. Bobbitt: You do not attempt to invade the province of the Commission?

Mr. Coates: No, but I have had a good deal of experience with that character of procedure, and we make that in the form of a motion for whatever it might be worth. It has been the past procedure in gas cases, and has worked out very well. No, we are not attempting to invade the province of the Commission.

* * * * * * *

[fol. 391] This concludes the transcript taken from defendant's Exhibit 13.

[fol. 392] Plaintiffs' Rebuttal Testimony

[fol. 393] Leon O. Lewis, a witness for plaintiffs, having been duly sworn, testified as follows:

Direct examination.

Questions by Mr. Lange:

Q. State your name.
A. My name is Leon O. Lewis, Jr.
Q. Where do you reside, Mr. Lewis?
A. San Antonio.
Q. What is your occupation?
A. I am a Public Accountant.
Q. I will ask you whether you are a Certified Public Accountant.
A. Yes, sir, I am a Certified Public Accountant.
Q. Do you have a certificate in this State—issued in this State?
A. Yes, sir.
Q. How long have you had that certificate?
A. Since July, 1927.
Q. July, 1927?
A. Yes, sir.
Q. What degree, if any, do you have, and from what school?
A. I am a graduate of the University of Texas, and have a Bachelor of Business Administration degree.
[fol. 394] Q. Is that the degree issued by the University School of Business Administration at Austin, Texas?
A. Yes, sir.

* * * * * * *

Mr. Lange: We desire at this time to introduce this exhibit in evidence as Plaintiff's Exhibit No. 4.

* * * * * * *

(Thereupon the document above referred to was marked Plaintiffs' Exhibit No. 4.)

Q. Mr. Lewis, turning to page 2 of the exhibit, what does the heading on page 2 recite?

A. The title?

Q. Yes.

A. The Border Gas Company, Texas Border Gas Company, and South Texas Gas Company, Historical Cost of Fixed Capital as Shown by Books.

Q. Now, Mr. Lewis——

A. And there is an asterisk referring to a foot-note there that the additions identified as pertaining to the transmission line from Jennings to Roma haye been eliminated in making this study.

[fol. 395] The following are pages 1771 and 1772 from S. F. Vol. III.

[fol. 396] PLAINTIFF'S EXHIBIT No. 4

Page 1

United Gas Public Service Company

Historical Cost of Fixed Capital

Old South Texas Gas Company and Texas Border Gas Company Systems, Excluding Jennings to Roma Transmission System Property

Historical Cost Per Books:		
Historical Cost of Fixed Capital Transferred From South Texas Gas Company and Texas Border Gas Company, October 21, 1932		$1,049,735.38
Additions: October 21, 1932 to December 31, 1932:		
General Property		1,400.68
Transmission System Property:		
Enlarge Portion Main Line Kennings to Pescadito Jct	$14,387.45	
Recondition 6" and 8" Lines Laredo Area	87,709.47	
		102,096.92
Balance—December 31, 1932		$1,153,232.98
Year Ended December 31, 1933:		
Additions	$3,747.14	
Retirements	4,986.47	
Net Retirements		1,239.33
Historical Cost of Properties December 31, 1933		$1,151,993.65

Plaintiff's Exhibit No. 4—Continued

Retirement Reserves:		
Accrued Book Reserves on Properties Transferred 10–21–32		$499,707.47
Add: Provision for Period—October 21, 1932, to December 31, 1933 Computed at 3%		41,295.97
		$541,003.44
Less:		
Charges to Retirement Reserve	$1,361.69	
Replacements Charged to Expense	31,143.60	
		32,505.29
Balance Accumulated Reserve December 31, 1933		$508,498.15
Retirement Reserves Adjusted to 3%:		
Adjusted Reserve at July 31, 1932		$126,559.13
Add: Provision for Depreciation for Period from October 21, 1932, to December 31, 1932		41,295.97
		$167,855.10
Less: Charges to Retirement Reserve	$1,361.69	
Replacements Charged to Expense	31,143.60	
		32,505.29
Reserve—December 31, 1933—Adjusted to 3%		$135,349.81

(Here follows one paster, side folio 397)

[fol. 397]

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Plaintiff's Ex. No. 4—Continued

Page 2

Border Gas Company, Texas Border Gas Company & South Texas Gas Company

Historical Cost of Fixed Capital as Shown by Books*

Year	Historical Cost Per Books: Additions	Retirements	Net Additions	Accumulated Additions	Depreciation Per Books: Provision for Depreciation Charged To Operations	Less Charged To Reserve	Less Retirement Expense Charged To Operations	Accumulated Depreciation Per Company Books	Adjusted Depreciation: Depreciation at 3%	Accumulated Depreciation at 3%
Border Gas Company:										
1910 Construction	$166,996.68	.....	$166,996.68	$166,996.68	.....	.....	.....	.....	.....	.....
1911 1- 1-11 to 12-31-11	29,241.36	$646.09	28,595.27	195,591.95	.....	.....	.....	.....	$5,438.83	$5,438.83
1912 1- 1-12 to 6-30-12	14,620.68	323.04	14,297.64	209,889.59	.....	.....	.....	.....	3,041.11	8,479.94
1913 6-30-12 to 6-30-13	13,003.21	174.09	12,829.12	222,718.71	.....	.....	.....	.....	6,489.13	14,969.07
1914 6-30-13 to 6-30-14	7,735.79	54.86	7,680.93	230,399.64	.....	.....	.....	.....	6,796.77	21,765.84
1915 6-30-14 to 6-30-15	5,737.40	1,825.71	3,911.69	234,311.33	$82,230.48	.....	$1,664.04	$80,566.44	6,970.68	27,072.48
1916 6-30-15 to 6-20-16	122,532.92	11,134.27	111,398.65	345,709.98	.....	.....	8,731.52	71,834.92	8,700.32	27,041.28
1917 6-30-16 to 6-30-17	7,083.12	23,077.29	15,994.17(R)	329,715.81	.....	.....	19,318.90	52,516.02	10,131.39	17,853.77
1918 6-30-17 to 6-30-18	15,069.85	5,069.23	10,000.62	339,716.43	24,363.76	.....	1,707.79	75,171.99	10,041.48	26,187.46
1919 6-30-18 to 6-30-19	14,643.45	.....	14,643.45	354,359.88	36,380.98	.....	797.99	110,754.98	10,411.14	35,800.61
1919 6-30-19 to 12-31-19	10,579.25	.....	10,579.25	364,939.13	18,833.44	.....	1,718.91	127,869.51	5,394.74	39,476.44
1920 1- 1-20 to 12-31-20	17,160.54	.....	17,160.54	382,099.67	33,869.06	$483.44	182.99	161,072.14	11,205.58	50,015.59
1921 1- 1-21 to 12-31-21	12,452.82	.....	12,452.82	394,552.49	32,319.67	2,168.77	1,727.84	189,495.20	11,649.78	57,768.76
1922 1- 1-22 to 12-31-22	179,713.71	.....	179,713.71	574,266.20	40,326.61	873.02	653.22	228,295.57	14,532.28	70,774.80
1923 1- 1-23 to 12-31-23	141,584.26	13,085.96	128,498.30	702,764.50	52,921.93	7,718.91	8,870.93	264,627.66	19,155.46	73,340.42
1924 1- 1-24 to 12-31-24	73,489.21	.....	73,489.21	776,253.71	61,341.64	5,712.71	1,191.53	319,065.06	22,185.28	88,621.46
1925 1- 1-25 to 12-31-25	131,192.98	.....	131,192.98	907,446.69	69,856.79	3,700.11	3,561.41	381,660.33	25,255.50	106,615.44
1926 1- 1-26 to 12-31-26	56,161.43	.....	56,161.43	963,608.12	77,644.23	673.13	537.05	458,094.38	28,065.82	133,471.08
1927 1- 1-27 to 12-31-27	34,307.27	9,056.79	25,250.48	988,858.60	81,514.07	21,589.20	1,108.09	516,911.16	29,287.00	140,060.79
1928 1- 1-28 to 4-10-28	26,366.02	8,712.49	17,653.53	1,006,512.13	23,001.68	8,471.63	85.50	531,355.71	8,314.05	139,817.71
Total Book Cost of Properties Transferred to South Texas Gas Company	$1,079,671.95	$73,159.82	$1,006,512.13	$1,006,512.13	$634,604.34	$51,390.92	$51,857.71	$531,555.71	$243,066.34	$139,817.71
South Texas Gas Company (S) & Texas Border Gas Company (T)										
1928 4-10-28 to 12-31-28 (S)	$15,287.70	3,157.12	12,130.58)		15,414.40	1,284.00)				
(T)	31,592.93	7,423.89	24,169.04)	$1,042,811.75	8,408.95	5,090.25)	$.....	$548,804.81	$22,183.92	$155,627.38
1929 1- 1-29 to 12-31-29 (S)	4,429.94	3,774.02	655.92)		21,558.83	158.32)				
(T)	21,044.84	8,320.71	12,724.13)	1,056,191.80	11,947.44	1,205.43)	.....	580,947.33	31,485.05	185,748.68
1930 1- 1-30 to 2-28-30 (S)	8,707.60	.....	8,707.60)		3,793.33	.....)				
(T)	3,275.69	643.50	2,632.19)	1,067,531.59	2,046.39	.....)	.....	586,787.05	5,309.31	191,057.99
1930 3- 1-30 to 6-30-30 (S)	3,870.57	.....	3,870.57)		6,551.26	.....)				
(T)	7,374.03	205.21	7,168.82)	1,078,570.98	3,319.67	.....)	.....	596,657.98	5,430.51	196,488.50
1931 7- 1-30 to 6-31-31 (S)	35,147.77	15,858.80	19,288.97)		11,999.60	269.90)				
(T)	28,394.51	4,183.04	24,211.47)	1,122,071.42	4,715.78	1,501.63)	.....	611,601.83	33,009.64	227,726.61
1932 7- 1-31 to 7-31-32 (S)	12,931.70	133,555.68	120,623.98)**(R)		8,877.21	132,886.70)				
(T)	40,092.11	1,100.86	38,991.25)	1,040,438.69	19,538.10	2,319.72)	.....	504,810.72	36,799.86	129,320.05
1932 8- 1-32 to 10-21-32 (S)	13,728.01	6,469.67	7,258.34)		1,227.41	6,143.17)				
(T)	5,229.80	3,191.45	2,038.35)	1,049,735.38	4,058.93	4,246.42)	.....	499,707.47	7,628.67	126,559.13
Total Book Cost of Properties Transferred to United Gas Public Service Company	$1,310,779.15	$261,043.77	$1,049,735.38	$1,049,735.38	$758,061.64	$206,496.46	$51,857.71	$499,707.47	$384,913.30	$126,559.13

* Note.—Additions Identified as Pertaining to Transmission Line from Jennings to Roma Eliminated.

** Note.—Transmission Lines Retired, New Lines not yet Charged into Capital Account, Depreciation Computed on Full Beginning Balance. The Adjusted Computations for Depreciation are Inaccurate to the Extent that Land, Organization Costs, and Rights of Way are Included in the Computation.

• • • • • • •

[fol. 398] Q. Mr. Lewis, proceeding further on page 2, the exhibit reflects the heading South Texas Gas Company and Texas Border Gas Company, beginning with the period of April 10, 1928, to December 31, 1928; and under the general heading of Historical Cost per Books, explain the columns as they appear. The first column is Additions, and the next is Retirements, and then the third reads Net Additions, and the fourth Accumulated Additions. Is that the three studies in that——

A. In the first column of Additions you will note in this section there are two lines for each period, one of them has the letter "S" and the other the letter "T"; those on the line with the letter "S" are additions and retirements to the South Texas Gas Company, and those indicated by the letter "T" are the additions and retirements to the Texas Border Gas Company. In the first column I have shown the additions to the fixed capital account, as per the books of the Company, and in the second column the retirements——

Q. New——

A. —or the deductions from the fixed capital account, as per the books of the company.

[fol. 399] Q. Just explain what you mean by the fixed capital account?

A. Fixed capital account is the title of the account shown on the company's books on which are entered the costs of all property additions and items termed, in accounting practice, as capital expenditures or expenditures for the plant or equipment, or organization expenses and items of that nature which are not normally charged to operating expenses.

Q. Capital accounts as distinguished from the operations of the company?

A. Yes.

Q. Now, the next column, headed retirements; what does that represent?

A. That is the retirements of fixed properties, as shown by the books of the company, for the periods indicated, or the reductions in fixed capital.

Q. And the next column, Net Additions; explain that.

A. That is just a net figure; the net figure between additions and retirements for any period.

Q. What is that figure there of $1,042,811.75; what does that represent?

A. That is the accumulated additions down to the last date; in other words, taking the balance at the end or at the beginning of the year, and adding on the net additions [fol. 400] for the year, we get the balance for the close of the period.

Q. In the succeeding columns, headed Depreciation as Per Books, in the first of which is the provision for depreciation charged to operations; explain that.

A. The items in that column are the charges to operating accounts or depreciation account for the depreciation for that particular period, and they have been charged to operations and set up in a depreciation reserve. The figures shown in that column as provision for depreciation charged to operations, are the actual provisions made on the company books, except that I have adjusted those figures for the Roma-Jennings property that I eliminated from the fixed capital side.

Q. Then proceeding under the next heading, less charges to reserve, what does that represent?

A. That represents charges against this reserve for losses the company has in retirements.

Q. The column headed accumulated depreciation per company books; what does that represent?

A. That represents the balance of the reserve after deducting from the accumulated reserve the charges for retirements, but in this case deducting an additional amount for retirement expense charged to operating accounts.

[fol. 401] Q. And that item is the depreciation accumulated as it appeared on the company's books for that period?

A. At the end of the period shown.

Q. And the two succeeding columns, adjusted depreciation; are those computations that you have made?

A. Yes.

(Defendant objects; objection overruled.)

* * * * * * *

Q. And you stated the items reflected under those two columns are adjustments by you, computing it at a rate of depreciation for the accumulation set up, of three percent—of such a rate of three percent had been applied?

The Court: I did not understand they were adjustments, but were calculations.

Q. That is correct.

Mr. Coates: Are they calculations or adjustments?

A. They are calculations, designed to show what the provision for reserve would be had the rate of three percent been used.

Q. Referring further to page 2, the bottom of the page, "Total Book Cost of Properties Transferred to United Gas Public Service Company". Where is that total reflected?

A. The total book cost of properties transferred to United Gas Public Service Company is $1,049,735.38 at October 21, [fol. 402] 1932.

Q. $1,049,735.38; and referring further as to the depreciation as per the books, what does the figure of $758,061.64 reflect?

A. The figure of $758,061.64 represents the total provision for reserve set up on the company's books for the periods indicated, eliminating the reserve applicable to those lines from Roma to Jennings.

Q. And the column, accumulated depreciation as per the company books, of $499,707.47?

A. That is the balance of the depreciation reserve per the company books after charging against that reserve the retirement expenses and losses as per the company books, with of course the same qualifications as to the Jennings-Roma lines.

Q. In other words, the Jennings-Roma lines are eliminated from that?

A. They are on this statement, yes.

Q. And on the next succeeding column, under Adjusted depreciation if depreciation is at three percent; that is the depreciation you have calculated if three percent had been applied?

Mr. Coates: The same objection.

Q. Making a total of $384,913.30?

[fol. 403] A. That is the total provision for depreciation during the periods shown, at the rate of three percent.

Q. If that rate had been applied?

A. Had that rate been used, yes.

Q. Now, Mr. Lewis, referring back to the item on that page of the total book cost of the properties transferred to the United Gas Public Service Company, please state what the records of the company show with reference to the amount set up at the time that property was transferred?

The Court: From whom to whom?

Q. From South Texas Gas Company and Texas Border Gas Company to United Gas Public Service Company.

A. You mean the amount at which these properties were set up on the books of the United Gas Public Service Company, when they were transferred?

Q. Yes.

Mr. Coates: And as of what date?

A. These properties, shown on the exhibit, and also the Roma-Jennings Lines, were transferred to the United Gas Public Service Company on October 21, 1932, and the journal entry setting up those properties places them on the United Gas Public Service Company's books at $934,798.02, with a reserve for depreciation of $78,632.20.

[fol. 404] Q. And what is the date of that entry?

A. October 21, 1932.

Q. And that, as I understand it, includes not only the properties that you had set up in this exhibit, but also includes the Roma-Jennings line?

A. The explanation of that journal voucher is, "to record acquisition of properties, assets and assumption of liabilities of South Texas Gas Company under agreement dated October 21, 1932". I might add that the Texas Border Properties were first transferred to the South Texas Gas Company and then the total transferred to the United Gas Public Service Company, and this is the journal voucher or a transcript of the journal voucher setting up the transfer.

The Court: And the question was, does that include the Jennings-Roma line as well?

A. It purports to include all the properties, including that line.

Q. Now then, did you find anything in the books and records of the company, the amount they set up for the Roma-Jennings line; the cost of that line?

A. You mean the cost when it was built—the cost to the South Texas Gas Company?

Q. Yes.

A. Yes, I think I can give you that—no, I cannot give you [fol. 405] that figure, except including a telephone line that was built.

Q. This transfer of properties, according to that journal entry, included all the properties of the company, didn't it?

A. It purports to, from the explanation on the journal voucher.

Q. And your figures include the telephone line, as well as the Roma line?

A. I do not have the Roma line here, but I can give you the * * * The items of additions definitely identified as pertaining to that Jennings-Roma line, total cost to South Texas Gas Company per their books, was $963,942.73.

Q. Of the Roma line alone?

A. Yes, that is the Jennings-Roma line. No—that includes some gathering lines. That is the amount I have eliminated in preparing this statement for the Monterrey line, which includes gathering lines, the telephone line, and some meter and regulator stations. The Roma line was set up—the first item charged on the books to the Roma-Jennings line was in one journal voucher in 1929, setting up the cost of the line, which includes, I think, the telephone line, at $848,232.98.

Q. Where does that entry appear in the company books?

A. That is the entry on the South Texas Gas Company books in December, 1929, setting up the cost of the Roma-Jennings line.

[fol. 406] Q. And in making these computations, you have eliminated the Roma Jennings line entirely?

A. Yes.

Q. And the journal entry you just spoke of, when the properties were transferred from the South Texas and the Texas Border to United Gas Public Service Company, contemplated the entire properties?

A. Yes.

Q. Including the Roma lines?

A. Yes.

Q. And that entry was—if you will give it to us again, please, the total entry, including all the properties?

A. The total amount charged to fixed capital account on the United Gas Public Service Company's books, in transferring these properties, is $934,798.02, and a depreciation reserve of $78,632.20.

Mr. Coates: Will you identify that entry, Mr. Lewis?

A. That is J-10-156 of the United Gas Public Service Company books.

Q. Mr. Lewis, turning to page 1 of the exhibit, Historical Cost Per Books, the first item appearing there of $1,049,735.38; where is that carried forward from?

A. From the fourth column from the left of page 2, cumulative additions transferred to United Gas Public Service [fol. 407] Company on October 21, 1932.

Q. And that figure is exclusive of the Roma line?

A. Yes.

Q. Now, about the middle of the page, Historical cost of properties, December 31, 1933, on page 1 of the Exhibit, the sum of $1,151,993.65; what does that reflect?

A. That represents the historical cost of these properties that were transferred to United Gas Public Service Company on October 21, 1932, plus the net additions that the United Gas Public Service Company had made to those properties at December 31, 1933.

Q. Now, the next column, Retirement Reserves; just explain that to the Court and the jury.

A. The item of accrued book reserves on properties transferred, of $499,707.47, represents the accumulated or the net depreciation after charging retirements, from 1910, through October 21, 1932—the depreciation accumulated on the properties that were transferred to the United Gas Public Service Co.

Mr. Coates: Do you mean the net credit balance in the depreciation reserve was set up on the books?

A. Well, it is hard to say it exactly, because there have been a number of mergers, and each time this was wiped [fol. 408] out and they started over; but this represents the total cumulative reserve in all the properties.

Mr. Coates: You said the total depreciation reserve on the properties, and I wondered if you meant that.

A. Perhaps I had better start over, then. I will put it this way—the $499,707.47 represents the net accumulations of depreciation reserves set up on these properties from 1910 to October 21, 1932, per the company's books.

Q. Now, the next main heading, Retirement Reserves, adjusted to three per cent; explain that calculation.

The Court: Do you mean Adjusted, or Calculated?

Mr. Lange: It is calculated, and not adjusted.

The Court: I understand calculated and adjusted mean two different things, and I might be wrong about that but I want to be right on these things.

Mr. Lange: It is a calculation.

A. That section indicates that the depreciation reserve would be on these properties, had a rate of three per cent been used—that is, an annual rate of three per cent been used for providing depreciation reserves.

Q. And the total reflected at the bottom of that page, of $135,349.81; what is that?

A. That is the balance that would be in the depreciation reserve had depreciation been computed at three per cent per annum.

[fol. 409] Q. Now, Mr. Lewis, referring back to page 2 of the exhibit——

The Court: Let me ask a question right here: Your last column at the bottom of the page here, of $126,559.13——

A. That is carried forward from page 2.

The Court: I am looking at page 2 now; see here, I have my finger right on it—as a matter of book keeping, why shouldn't that be the difference between the next two columns to the left?

A. No, because the second column to the left is the actual depreciation per the company books, and these last two columns are entirely independent of the book depreciation but use as a basis the cost of the assets and use a rate of three per cent to compute depreciation.

Mr. Coates: Now, Mr. Lange, I don't want to break in, but are you using the term depreciation and accumulated depreciation in each case in your testimony to designate balances in the depreciation reserve account?

A. When I have referred to accumulated depreciation, that is what I mean, yes.

Mr. Coates: That is the book entries?

A. Yes. Now, this figure of $126,000.00 accumulated depreciation at October 21, 1932, is the balance that would have been in the depreciation reserve account, had depreciation

[fol. 410] been computed at three per cent per annum on the cost of the properties.

. . . . . .

A. That $126,000.00 figure is the $384,000.00 in the second column to the left, which was the total provision, less the figure of $206,496.46, which amounts have actually been charged to the reserves of the company on the company books, and the item of $51,857.71.

. . . . . .

(Defendant's objection and motion to strike both overruled.)

[fol. 411] JOHN PATRICK KINNEY, a witness for the plaintiff, having been duly sworn, testified as follows:

Direct examination.

Questions by Mr. Lange:

Q. State your name, please.
A. John Patrick Kinney.
Q. Where do you reside?
A. San Antonio, Texas.
Q. What is your occupation?
A. Certified public accountant.
Q. How long have you been in that occupation?
A. About twenty years.
Q. Have you had occasion during the twenty years of that work to make any audits of any utilities properties?
A. Yes, sir.

. . . . . .

Q. Mr. Kinney, when you first began the work in connection with this audit what did you do?
A. The first thing that I had to do was to get hold of records, and I spent considerable time in locating records.
Q. Whom did you get in touch with at the Gas Company?
A. Mr. Robertson, who was then Manager, I believe, of the Laredo unit, and his chief accountant, I think his name was Thorne.

[fol. 412] Q. You inquired of them and requested them to give you access to the records and books of the company for the purpose of making this audit?

A. Yes, sir.

Q. All right; what did you do then?

A. Well, I asked for certain records, and they were not produced at that time. Certain records were given me, and then I believe Mr. Robertson, with Mr. Thorne, showed me where the vault was in the Laredo office, showed me where the papers and records were, and told me what I needed to go and get.

Q. What did you do then?

A. I tried to get the original documents right at the inception of the company.

Q. You are speaking of the——

A. Of the Border Gas Company.

Q. And what documents were furnished you in connection with that?

A. Well, the old ledgers of the Border Gas Company, they were given to me. They run down for several years; and then certain vouchers, letters, and such as that were handed to me, pertaining to the inception of the Border Gas Company. Some of the papers pertained to the franchise holders previously, I think, Johnson and Reiser.

[fol. 413] Q. In connection with those records that were furnished to you by the Company, I will ask you whether this inventory is one?

A. Yes, sir.

Q. Together with the letter accompanying it?

A. Yes, sir; they were both attached.

Q. What is the date of that letter?

A. April 14, 1921.

Q. And the inventory attached to it?

A. December 31, 1910.

Mr. Lange: We desire at this time to introduce this letter and inventory in evidence. It was identified yesterday by Mr. Stein as having been signed by him.

(Thereupon the letter and attached inventory referred to above were offered in evidence, and marked Plaintiff's Exhibit No. 6, and same is copied in this transcript below.)

Q. Will you look at this letter, Mr. Kinney, and the inventory attached to it?

A. Yes, sir.

Q. How did you then proceed in connection with this matter? What does the letter represent? First, what does it say?

A. The letter is written by Mr. Stein to Mr. G. R. Page, Houston, Texas, and it is outlining the analysis of the investment.

[fol. 414] Mr. Lange: I will just read it. It is dated at Laredo, Texas, April 14, 1921. (Reads as follows:)

"Mr. G. R. Page, Houston, Texas.

DEAR SIR:

The enclosed copy of trial balance and copy of analysis of investment as of December 31, 1910, covers our record of property acquired by the old company prior to January 1, 1911 when the present accounts of Border Gas Company were begun. All vouchers and other records, I understand, were sent to Houston when the original plant was completed and turned over to Border Gas Company.

From information I have been able to obtain all of this property was purchased by the old company during the calendar year 1910, all of the construction work having been begun and completed during that year.

Trusting that this will enable you to prepare the statement as outlined in your letter, I am

Very truly yours, (Signed) W. W. Stein."

Mr. Lange: Now, the enclosed trial balance referred to in that letter reads as follows (reads):

[fol. 415] "Border Gas Company

Analysis of Investment

Statement	December 31, 1910
Real Estate	150.00
Rights of Way	10.93
Buildings	14.72
Tools	34.13
Fittings	17,364.05
Telephone Line from Reiser to Laredo	1,601.95
Labor, Teaming, Freight & Miscellaneous	31,718.83
Gas Receivers and Regulators	2,382.20
Gas Meters	5,791.00
Office Furniture	332.68
Horses and Wagons	225.00
Automobile	1,535.00

Line Pipe Size	Length Feet	Inches		
1"	3,039'	9"	130.49	
1¼"	3,034'	4"	177.04	
2"	28,905'	8"	2,684.66	
3"	34,562'	2"	5,527.21	
4"	89,203'	4"	22,316.43	
6"	36,672'	4"	13,032.26	
8"	128,649'	2"	71,838.25	
[fol. 416]				
10¾"	2,213'	4"	1,862.03	
12¾"	155'	11"	163.64	
16"	150'	7"	208.60	
				117,940.61
Total Investment				179,101.10

Border Gas Company

Balance Sheet		December 31, 1910
Investment	179,101.10	
Gas Ledger	648.23	
Warehouse Account	923.94	
Cash—Milmo National Bank	2,896.69	
Petty Cash	69.23	
Southern Trust Company		182,990.96
Gas Earnings		516.58
Producers Oil Company		131.65
	183,639.19	183,639.19

[fol. 417] Q. Mr. Kinney, in connection with this inventory what original books of entry did you find as beginning or opening entries of the Border Gas Company?

A. I found Journal Voucher Number 1, which debited Plant and Equipment $550,000.00, and credited Capital Stock $300,000.00 and Surplus $250,000.00. That was the only opening entry on the Border Gas Company's books.

Q. That was the only one of their original books?

A. Yes, sir.

Q. That you found among their records?

A. Yes, sir.

Q. How did you then proceed in making your opening entry of this audit--your beginning point of this audit?

A. Naturally, I wanted to know what the Plant and Equipment were, $550,000.00. I wanted an analysis of it, to see what the stock was issued for and the surplus. And after considerable looking and digging around in the vaults I ran across some inventory sheets—tax returns made to the Government, tax claims, and such as that, and began to unearth some of the individual detailed analysis sheets, which I tried to tie back into the opening entry. Not being able to do that, for the tax returns disclosed the actual amounts on which depreciations were being taken by the Company there at that time was taken on the basis of [fol. 418] $166,996.68, I believe, and the records showed that the balance of the $383,000.00 was the value of intangibles, good will, and such as that, making up the $550,000.00 for which the opening journal entry was set up.

Q. How did you finally arrive at the beginning point of $166,996.68, as shown at the top of page 2 of Exhibit 4?

A. Well, that was the basis as shown here on this trial balance and analysis of investment, as they call it, after a credit that went to Materials and Supplies amounting to $12,104.42 that was taken off of this investment of $179,101.10. That made the $166,996.68, which was further verified by actual Journal vouchers, on which the Company was computing their depreciation when they did start computing it regularly.

Q. How later in years did the Company use that $166,996.68 in connection with the computation of their depreciation?

A. They were using that up to the time I stopped.

Q. What year was that?

A. 1928. That ran through the yearly journal entries in setting up their depreciation.

* * * * * * *

[fol. 419] Cross-examination.

Questions by Mr. Coates:

* * * * * * *

Q. Turn now to Plaintiff's Exhibit 4. These four columns headed "Historical Cost per Books" purport to show the historical cost as reflected by the ledgers of the Company after the elimination of everything from the opening entry except the $166,996.68?

A. That is correct.

Q. And do any of these columns here contain anything for Materials and Supplies Account?

A. You mean not used nor put into actual construction?

Q. For the Material and Supplies kept on hand account.

A. Inventory account?

Q. Yes.

A. No; these do not include that.

Q. Are there any items in these for cash working capital?

A. Cash working capital?

Q. Yes.

A. No. These are just fixed properties.

Q. These are just the property additions, and I believe you said you carried this down to April 10, 1928, and that is as far as you assumed responsibility for it?

A. Yes, sir.

[fol. 420] Q. And at that time what was the total amount of Additions, including in the opening entry only the $166,996.68?

. . . . . .

A. $1,079,671.95.

Q. And the cost of the Property retired during that same period?

A. $73,159.82.

Q. And the amount of Net Additions?

A. $1,006,512.13.

Q. And the Accumulated Additions?

A. $1,006,512.13.

Q. Is it your testimony here that that represents the historical cost of the physical plant and property of the Company, as the same is reflected by these books and ledgers as of that date?

A. The Company records. Now, those are the ledgers that were presented to me.

Q. Yes, sir.

A. At Laredo.

Q. Yes.

A. And I assumed that those are the Company ledgers.

Q. I assume so, too, and from the ledgers you had these figures reflecting Additions, Retirements, and the Net Additions, and Accumulated Additions over this period?

[fol. 421] A. Yes, sir; that is right.

Q. Excluded the opening entry and confining the amounts to capital charges for plant and property?

A. No; not excluded all that opening entry; excluding everything except the $166,996.68.

Q. If the entire opening entry were included that would increase each amount by some three hundred thousand dollars, would it not?

A. Three hundred eighty some odd thousand.

* * * * * * *

[fol. 422] Leon O. Lewis, a witness for plaintiffs, resumed his testimony and testified as follows:

Direct examination.

Questions by Mr. Lange:

Q. Mr. Lewis, you stated that in connection with your work in making this audit for the City of Laredo you made supplemental audits bringing the audit periods finally down to and through December 31, 1933?

A. That is correct.

Q. Did you, in connection with the making of that audit over the period, prepare an exhibit?

A. Yes, sir.

(Defendant objects to that part of instrument dealing with years prior to 1932; objection overruled.)

Q. Will you identify the exhibit, Mr. Lewis?

A. Yes, I prepared this.

* * * * * * *

(Thereupon the document above referred to was marked as Plaintiffs' Exhibit No. 8.)

A. What is this exhibit number?

Q. No. 8—Plaintiffs' Exhibit No. 8. Mr. Lewis, this exhibit was prepared by you in connection with the making of this audit for the City of Laredo?

[fol. 423] A. Yes, sir.

Q. From the books and records of the South Texas Gas Company, the Texas Border Gas Company, and the United Gas Public Service Company?

A. Yes, sir.

[fol. 424] The following are pages 1786, 1790 and 1794-1797 from S. F. Vol. III.

[fol. 425]

PLAINTIFFS' EXHIBIT No. 8

Page 1

South Texas Gas Company—Texas Border Gas Company—United Gas Public Service Company

Consolidated Statement of Earnings from Operations Within the City Limits of Laredo

For the Years Ended June 30, 1929, June 30, 1930, June 30, 1931, July 31, 1932, & December 31, 1933

	Consolidated South Texas Gas Company & Texas Border Gas Company				United Gas Public Service Company
	Year Ended June 30			Year Ended July 31,	Year Ended Dec. 31,
	1929	1930	1931	1932	1933
Operating Revenues—					
Gas Sales	$281,320.97	$319,473.23	$254,152.13	$192,349.13*	$157,199.62*
Forfeited Discount	7,899.28	8,451.06	7,176.81	.....	.....
Other Operating Revenues	1,485.37	1,668.51	1,663.36	2,108.96	1,623.00
Total Operating Revenues	$290,705.62	$329,592.80	$262,992.30	$194,458.09	$158,822.62
Operating Expenses—					
Gas Purchases	$56,132.05	$62,233.89	$50,412.75	$22,551.10	$14,997.10
Transmission System Operation	4,473.46	8,779.63	4,727.45	3,167.15	2,511.69
Transmission System Maintenance	5,345.23	3,041.39	2,827.61	1,757.74	1,645.39
Distribution System Operations	17,515.93	19,318.45	13,701.53	11,561.46	10,814.78
Distribution System Maintenance	3,773.79	5,554.47	8,290.11	12,506.66	4,609.09
Customers' Expense	.....	.....	8,618.47	15,367.28	14,145.74
New Business Expense	1,872.74	3,414.56	4,035.28	4,615.33	2,805.19
General Office and General Expense	41,520.51	50,577.60	25,117.95	29,884.60	27,876.42
Taxes—Other than Income Tax	10,619.67	14,341.39	15,550.53	12,738.30	13,893.06
Other Operating Expense	.....	.....	362.96	.....	.....
Total Operating Expenses	$141,253.38	$167,261.38	$133,644.64	$114,149.62	$93,298.46
Net Return Before Providing for Depreciation or Income Tax	$149,452.24	$162,331.42	$129,347.66	$80,308.47	$65,524.16

Note.—Includes Forfeited Discounts.

[fol. 426] Pages 1787-1789, both inclusive, of S. F. Vol. III omitted.

[fol. 427]

Plaintiffs' Exhibit No. 8—Continued

South Texas Gas Company

Statement of Earnings

For the Year Ended July 31, 1932

				Texas Border Gas Company			
					Laredo		
	Total	Misc. Sales	Monterrey Line	Other Towns	Total	Outside City	Inside City
Operating Revenues:							
Gas Sales	$309,211.57	$5,385.25	$177,455.14	$10,692.72	$115,678.46	$20,448.51	$95,229.95
Rent Revenues	122.74	1.94	75.24	3.85	41.71	7.38	34.33
Total Operating Revenues	$309,334.31	$5,387.19	$177,530.38	$10,696.57	$115,720.17	$20,455.89	$95,264.28
Operating Expenses:							
Gas Purchases	$115,496.85	$1,862.40	$81,892.10	$2,261.95	$29,480.40	$6,776.75	$22,703.65
Transmission and Gathering System Exp.	16,504.16	259.12	11,843.38	288.82	4,112.84	945.69	3,167.15
Transmission and Gathering System Maintenance	9,159.69	143.81	6,572.99	160.30	2,282.59	524.85	1,757.74
General Office and General Expense	18,545.47	293.02	11,368.37	582.33	6,301.75	1,114.58	5,187.17
Taxes	8,582.27	166.14	5,176.35	319.80	2,919.98	613.05	2,306.93
Total Operating Expenses	$168,288.44	$2,724.49	$116,853.19	$3,613.20	$45,097.56	$9,974.92	$35,122.64
Net Return Before Providing for Depreciation	$141,045.87	$2,662.70	$60,677.19	$7,083.37	$70,622.61	$10,480.97	$60,141.64

[fol. 428] Pages 1791–1793, both inclusive, of S. F. Vol. III omitted.

[fol. 429]

Plaintiffs' Exhibit No. 8—Continued

Texas Border Gas Company

Statement of Earnings for the Year Ended July 31, 1932

	Total	Mdse. & Jobbing	Gas Operations			
			Other Towns	Laredo City Gate	Less: Outside City Limits	Operations Inside City Limits
Operating Revenues:						
Gas Sales	$256,137.03	.....	$25,155.73	$230,981.30	$38,632.17	$192,349.13
Reconnect Charges	2,183.40	.....	301.53	1,881.87	73.14	1,808.73
Rent Revenues	175.50	.....	.....	175.50	.....	175.50
Miscellaneous Operating Revenues	109.12	.....	15.07	94.05	3.65	90.40
Merchandise and Jobbing Sales	10,780.60	$10,780.60	.....	.....	.....	.....
Total Operating Revenues	$269,385.65	$10,780.60	$25,472.33	$233,132.72	$38,708.96	$194,423.76
Operating Expenses:						
Gas Purchases	$126,218.63	.....	$10,692.72	$115,525.91	$20,448.51	$95,077.40
Distribution System Operations	13,956.38	.....	1,927.38	12,029.00	467.54	11,561.46
Distribution System Maintenance	15,097.36	.....	2,084.94	13,012.42	505.76	12,506.66
Customers' Expense	18,550.55	.....	2,561.83	15,988.72	621.44	15,367.28
New Business Expense	6,395.08	255.80	604.98	5,534.30	918.97	4,615.33
General Office and General Expense	20,122.54	804.90	1,903.59	17,414.05	2,891.61	14,522.44
General Expense—Divisional Operations	14,098.64	563.95	1,333.73	12,200.96	2,025.97	10,174.99
Taxes	12,272.06	.....	1,133.15	11,138.91	707.54	10,431.37
Merchandise & Jobbing Expenses	15,670.82	15,670.82	.....	.....	.....	.....
Total Operating Expenses	$242,382.06	$17,295.47	$22,242.32	$202,844.27	$28,587.34	$174,256.93
Net Return Before Providing for Depreciation	$27,003.59	$6,514.87(R)*	$3,230.01	$30,288.45	$10,121.62	$20,166.83

* (R) Denotes figure in red.

[fol. 430] Plaintiffs' Exhibit No. 8—Continued

South Texas Gas Company and Texas Border Gas Company

Summary of Questionable Items Contained in Consolidated Statements of Earnings from Operations in City Limits of Laredo

	Year Ended June 30,			Year Ended July 31,
	1929	1930	1931	1932
Management fees	$7,656.27	$11,811.82	$2,220.91	$1,815.56
Loss on Bad Debts	723.30	2,138.14	1,294.80	2,874.47
Advertising	1,283.76	2,591.58	1,495.04	2,054.63
General Office Expense Prorated from United Gas Company	.....	.....	9,899.93	12,389.37
Special Payrolls Prorated from United Gas Company	.....	.....	5,069.25	3,154.26
General Expense Prorated from Southern Gas Company	.....	.....	718.76	1,838.01
Maintenance of General Structures—United Gas Company	.....	.....	.....	434.42
Donations	.....	.....	.....	447.72
Testing Distribution Mains	.....	.....	.....	842.35
Laredo Rate Case Expense	.....	.....	.....	1,342.32
General Expense Prorated from United Production Company	.....	.....	.....	153.94
Totals	$9,663.33	$16,541.54	$20,198.69	$27,347.05

[fol. 431]

PLAINTIFFS' EXHIBIT No. 8—Continued

South Texas Gas Company

Questionable Items Contained in Operating Statements
Years Ending June 30, 1929, 1930, 1931 and July 31, 1932

		Total	Per Cent Allocated to Laredo	Amount Allocated to Laredo
Year Ended June 30, 1929—				
Management Fees	General Expense	$3,178.93	80.32%	$2,553.32
Year Ended June 30, 1930—				
Management Fees	General Expense	$7,495.84	58.51	$4,385.82
Year Ended June 30, 1931—				
Management Fees	General Expense	$2,935.80	29.22	$857.84
General Office Expense Prorated	" "	7,051.78	29.22	2,060.58
Special Payrolls—United	" "	5,541.80	29.22	1,619.31
General Expense—Southern Gas Co.	" "	1,985.22	29.22	580.08
Total		$17,514.60		$5,117.76
Year Ended July 31, 1932—				
Management Fees	General Expense	$1,882.79	27.97	$526.62
General Office Expenses Prorated	" "	10,023.60	27.97	2,803.60
Maintenance General Structures	" "	387.66	27.97	108.43
General Expenses—Southern Gas Co.	" "	3,308.47	27.97	925.38
General Expense—United Prod. Co.	" "	550.38	27.97	153.94
Total		$16,152.90		$4,517.97

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[fol. 432]

PLAINTIFFS' EXHIBIT No. 8—Continued

Texas Border Gas Company

Questionable Items Contained in Operating Statements
Years Ending June 30, 1929, 1930, 1931 and July 31, 1932

		Total	Per Cent Allocated to Laredo	Amount Allocated to Laredo
Year Ended June 30, 1929—				
Management Fees	General Expense	$7,075.64	72.12%	$5,102.95
Loss on Bad Debts	" "	1,002.91	72.12	723.30
Advertising	New Bus. "	1,780.03	72.12	1,283.76
Total		$9,858.58		$7,110.01
Year Ended June 30, 1930—				
Management Fees	General Expense	$10,293.87	72.14	$7,426.00
Loss on Bad Debts	" "	2,963.87	72.14	2,138.14
Advertising	New Bus. "	3,592.43	72.14	2,591.58
Total		$16,850.17		$12,155.72
Year Ended June 30, 1931—				
Management Fees	General Expense	$2,020.56	67.46	$1,363.07
Loss on Bad Debts	Customers' "	1,574.80	82.22	1,294.80
Advertising	New Bus. "	2,216.18	67.46	1,495.04
General Off. Exp. Prorated	General "	10,879.63	67.46	7,339.40
Spec. Payrolls—United Gas Co.	" "	5,114.06	67.46	3,449.94
General Expense Prorated—Southern Gas Co.	" "	205.57	67.46	138.68
Total		$22,010.80		$15,080.93

Year Ended July 31, 1932—				
Management Fees	General Expense	$1,785.98	72.17	$1,288.94
Loss on Bad Debts	Customers' "	3,348.19	82.84	2,773.64
Loss on Bad Debts	General "	139.72	72.17	100.83
Advertising	New Bus. "	2,846.93	72.17	2,054.63
General Office Expense Prorated	General "	13,282.22	72.17	9,585.77
Maintenance General Structures	General "	451.67	72.17	325.99
General Expense Prorated—Southern Gas Company	" "	1,264.56	72.17	912.63
Special Payrolls—United Gas Co.	" "	4,370.59	72.17	3,154.26
Donations	" "	343.16	72.17	247.66
Donations	Dist. System Operations	241.50	82.84	200.06
Testing Mains for Leaks	Dist. System Operations	1,016.84	82.84	842.35
Laredo Rate Case Expense	General Expense	1,859.94	72.17	1,342.32
Total		$30,951.30		$22,829.08

[fol. 433] Page 1798 to end of Plaintiffs' Exhibit 8 omitted from S. F. Vol. III.

* * * * * * *

[fol. 434] Q. That page I shows the operating revenues for what periods of time?

A. For the year ended June 30, 1929, the year ended June 30, 1930, the year ended June 30, 1931, the year ended July 31, 1932, and the year ended December 31, 1933.

* * * * * * *

Q. Now, for the year ended June 30, 1929, what does this net return show?

A. The net return, before providing for depreciation and income taxes, is $149,452.24.

Q. And for the year ended June 30th, 1930?

A. $162,331.42.

Mr. Coates: It is understood our objection goes to all this?

The Court: Yes, sir.

Q. And for the year ended June 30, 1931.

A. $129,347—and, I believe that is sixty-six cents.

Q. Yes, sixty-six cents.

A. My copy isn't clear.

Q. Now, Mr. Lewis, the next period is for the year ended July 31, 1932. Why was the period ending July 31, 1932, chosen instead of just continuing the twelve month period?

[fol. 435] A. At the time the case was——

Q. You mean the hearing before the Railroad Commission?

A. Yes. It was prepared for the hearing before the Commission, and that was the latest possible date that we could get the figures at that time.

Q. And that is why that period was chosen?

A. Yes.

Q. And that shows a net return for that period of how much?

A. $80,308.47.

Mr Coates: Are you in each case referring to before depreciation and income tax?

Mr. Lange: Yes, sir.

Q. And the last period covers the period of operations of the United Gas Public Service Company for the year ended

December 31, 1933. Now, when was it that the United Gas Public Service Company took over these properties?

A. On October 31, 1932.

Q. And what does the net return for the last period show?

A. Before depreciation and income taxes, $65,524.16.

* * * * * * *

Q. Now, Mr. Lewis what do the items appearing on page 10 show?

A. Page 10 is a summary of items allocated to Laredo in the preceding exhibits upon which I was unable to make [fol. 436] or I was unable to get detailed verification or items which in rate controversies have been questioned as to their propriety in rate controversies, and I have included those items in my preceding items, and have set them out here for the information of anyone reading the exhibit.

Q. That is for reference to operations within the city limits of Laredo?

A. The amounts shown on page 10 over the net amounts allocated to the city of Laredo in the preceding exhibits.

Q. What do the figures on page 11 reflect?

A. Page 11 is in support of—pages 11 and 12 support the items summarized on page 10; page 11 showing in detail the questionable items in the operating statements of the South Texas Gas Company, the total and the amounts allocated to Laredo; and page 12 shows the same items contained in the Texas Border Gas Company's statements, both in total and the amount allocated to Laredo; pages 11 and 12 are summarized for convenience on page 10.

* * * * * * *

Q. Mr. Lewis, turn to Exhibit 8, page 1, the item of Gas Purchases. Those were computed at the actual gas purchase figures as represented by the Company's books?

A. For each year.

[fol. 437] Q. For each of the years? For the year 1929?

A. No.

Q. What adjustments did you make? Explain them.

A. Those first three periods—well, the first four periods show the gas at 5 cents a thousand cubic feet. During the first three periods, that is June 30, 1929, June 30, 1930, and June 30, 1931, those purchases were entered on the

Company books at 8 cents a thousand for industrial gas and 13 cents a thousand cubic feet for domestic gas; but there was an amended contract in December, 1929, amending the prior contract, that all gas billed from the South Texas Production Company was to be billed at 5 cents a thousand cubic feet; and while the Company continued billing under the old contract of 8 cents and 13 cents, their books were later adjusted to a basis of 5 cents a thousand cubic feet; so I adjusted the first three periods to 5 cents a thousand cubic feet. During the year ending July 31, 1932 the gas was actually billed at 5 cents, and that was the rate that I used. For the year ending December 31, 1933, I have set up the Gas Purchases at the actual purchase price, as shown by the books for the Laredo line, and have allocated to the city limits of Laredo the proportionate part of that total Gas Purchases for the Laredo line which the deliveries to the City limits of Laredo bear to the total.

• • • • • • •

[fol. 438] Q. Mr. Lewis, in your statement of Operating Expenses, as they appear on page 1 of the Exhibit, have you included any operating charge for pipe line rental?

A. I have not.

Q. Why? Explain why you have not included in that item and allocated any part of it to Laredo as an Operating Expense?

A. That pipe line rental is——

Q. Where is that pipe line located?

A. According to my understanding the pipe line rental is paid to the Southern Gas Company on this section of line from Jennings Junction to Jim Hogg Junction, and from analysis of the gas purchases and deliveries for the year, there was sufficient gas produced from the west side of the Junction that made it unnecessary for any gas to flow through that line——

Mr. Coates: This witness has qualified here as an accountant, and he is now attempting to testify as to what is necessary or not necessary in the operation of this Company's property.

The Court: I think you misunderstood him.

(Defendant objects; objection overruled.)

Q. Mr. Lewis, have you included in the Operating Expenses reflected on page 1 for any of the periods any item of gathering charge?

[fol. 439] Mr. Coates: Page 1 of what?

Q. Of this same Exhibit 8.

A. I have included in this exhibit portions of gathering field expenses, but I have not included any part of the one cent gathering charge paid to the Southern Gas Company in the Carolina-Tex field.

Q. Why?

A. That gathering charge—there are several reasons why I didn't include it. In the first instance, that gathering charge did not go into effect, either directly or indirectly, until after the Monterrey or the Jennings-Roma line was built, so that it appeared that at least one of the reasons why that gathering charge was necessary was so that the gas that had formerly been going to Laredo might go down the Mexico line, so that I considered that charge of one cent——

Mr. Coates: We object to an accountant testifying with respect to matters of operation.

(Objection overruled.)

Q. Go ahead and make your complete statement.

A. —was brought about, at least partially by the construction of the Jennings-Roma line.

[fol. 440] Mr. Coates: It is understood our objection goes to all this testimony?

The Court: Yes, sir.

A. Another reason that I excluded the gathering charge in all my exhibits is that the contract under which it is charged was made with an affiliated company, and was therefore subject to some question.

Mr. Coates: We object to that further because it is a legal conclusion of this accounting question.

A. He asked me for my reasons why I got it out.

The Court: You are giving the reasons that occur to your mind; you are not trying to state legal reasons?

A. No, sir.

The Court: The objection is overruled.
Mr. Coates: Note our exception.

A. There were also some other facts in connection with that which made me somewhat doubt whether or not it was a proper charge. For sometime after the contract was entered into between the South Texas Gas Company and the Southern Gas Company, providing for gas deliveries at 5 cents on the South Texas controlled wells, and 6 cents on some others, the Southern Gas Company billed gas direct to the South Texas Gas Company at either 5 or 6 cents per thou- [fol. 441] sand cubic feet. At the same time the South Texas Production Company, another affiliated company, was billing gas in the same field at 8 cents and 13 cents per thousand cubic feet. After the South Texas—Southern Gas Company contract providing for 5 and 6 cent gas came into effect, the Southern Gas Company delivers, and the South Texas Gas Company were billed direct at 5 and 6 cents, until February, 1931, when the South Texas Gas Company was transferred from the Laredo Division to the San Antonio for accounting purposes. Beginning at that time, the Southern Gas Company stopped billing gas direct to the South Texas Gas Company, and began billing it through the South Texas Production Company at increased rates up to 8 cents per thousand cubic feet, and in addition to that, charged the one cent gathering charge. All of those circumstances influenced me in eliminating the gathering charge. There was also a clause in the Southern Gas Company—South Texas Gas Company contract which caused me to make the elimination, and that was the paragraph that provides that the South Texas Gas Company should pay the operating costs of the transmission lines belonging to the Southern Gas Company, which it was using.

Mr. Coates: Transmission?
[fol. 442] A. The gathering lines. If I remember correctly, it has been a long time since I have seen that contract. It has been introduced here, hasn't it?

* * * * * * *

Mr. Coates: That was introduced and marked as Defendant's Exhibit 7, and two copies of it furnished to counsel for the plaintiff.

* * * * * * *

A. Let's see. I had a copy of it, but I haven't seen it for a good long while. Paragraph 3 of this contract recites that "South Texas shall operate said gathering system and pay all the costs of such operation, including the blowing of wells, the furnishing of meter charts and the collecting and forwarding of said charts. Southern shall continue to maintain and repair said gathering system". But my interpretation of this contract, if I may state it——

* * * * * * * *

A. —is that South Texas shall pay the operating costs.

The Court: Wait just a moment. I think you have gone far enough to show that you didn't include that one-cent, because of that paragraph you have now read.

* * * * * * *

Mr. Bobbitt: Any other reasons?

A. That's all I can recall at the present.

[fol. 443] The Court: Now, as I understand, you have given a number of reasons why you didn't include that one-cent gathering charge in the cost of gas to the Laredo line.

A. The one-cent gathering charge?

The Court: The one-cent gathering charge. And the exhibit which you have made and introduced here showing the cost of gas purchased does not include that one-cent gathering charge?

A. It does not.

(Defendant's motion to strike made and overruled.)

* * * * * * *

[fol. 444] A. All the sales made in the Laredo town plant, and I will use that term to designate both inside and outside the city of Laredo on the distribution system, pass through the Laredo city gate except for small deliveries which are made from the transmission line before the gas reaches the city gate; but except for that small amount of gas, all gas sold there in the city of Laredo or outside the city limits on the Laredo distribution system, passes through the Laredo city gate meter.

Q. And there is also a meter that serves the smelter situated outside the city of Laredo?

A. Yes.

Q. The Timonox Refinery, I believe it is.

A. Yes.

Q. Now, will you explain the method of allocation followed by you in connection with the distribution properties, Mr. Lewis?

A. The distribution system operating expenses, or the distribution system operations, distribution system maintenance and customers expenses, have been allocated on the basis of the average number of meters served for the twelve months periods indicated.

* * * * * * *

[fol. 445] Q. * * * What method of allocation did you pursue with reference to any of the other operating items affecting the distribution system in the city of Laredo?

A. The new business expense was allocated to the city of Laredo on the basis of gross revenues.

Q. Now, explain how you proceeded on that?

A. Well, I charged to the city limits of Laredo, the proportional part—and I am speaking of the first four periods shown on the exhibit now.

Q. That is, 1929, 1930, 1931 and July 31, 1932?

A. Yes.

Mr. Coates: This does not apply to the calendar year of 1933?

A. The first item we discussed does—that is, the meter basis, and the same method is pursued in connection with new business expense, except that for the first four years, I took the total new business expense of the Texas Border Gas Company, and allocated that proportionate part to the City Limits of Laredo which the gross revenues in the city of Laredo bear to the total gross revenues of the company. For the year ended December 31, 1933, the district new business expense of the Laredo district of United Gas Public Service Company is allocated on the basis of gross [fol. 446] revenues. That is, the city of Laredo is charged with that proportionate part of the district new business expense which the city of Laredo's gross revenues bear to the total gross revenues of the Laredo district.

Q. Now, did you apply that method to any other item of operating expenses in the city of Laredo distribution system?

A. General expenses for the first four periods named, the years ended June 30, 1929—1930 and 1931, and the year ended July 31, 1932, are allocated on the basis of gross revenues, taking the total general expense of the Texas Border Gas Company, and allocating to the city of Laredo that proportionate part of the total which the gross revenues within the city of Laredo bear to the gross revenues of the company.

For the year ended December 31, 1933, the district general expenses of the Laredo district of United Gas Public Service Company are allocated on the basis of gross revenues, that is, the city of Laredo is charged with the proportionate part of the district general expense which the total revenues or gross revenues within the city of Laredo bear to the total gross revenues for the district.

The general office and general expense of the Houston office was allocated—Well, starting with the general of-
[fol. 447] fice, the total general office and general expenses of the general office was first allocated to the Laredo district. The first allocation was to segregate that total as between the production, transmission and distribution departments. For that segregation, I used the same percentages that the company has indicated in their manual; * * *

* * * * * * *

A. * * * Anyway, in the Houston offices, I discussed at length with the employees and officials of the company, their methods of allocation of expense, and undertook to use, for the allocation between production, transmission and distribution system departments, the same method of allocation that they have used. The part of that which was allocated to distribution system, I have allocated to the Laredo district on the basis of gross revenues, operating expenses and number of customers, given equal weight in the percentage to each of the three items mentioned. The allocation from the Laredo district to the city limits of Laredo I have allocated on the basis of revenues and number of meters.

Q. Does that comprise all the allocations that you have made, affecting the operating expenses in the city of Laredo—the distribution system operating expenses?

[fol. 448] A. No, there is distribution system taxes.

Q. How did you allocate those?

A. I did not make an analysis of the tax account. The taxes are all carried on the general office books in Houston, and an analysis of that account for the entire United Gas Public Service Company entailed quite a bit of time, and I have taken the company's analysis of the tax account, and those items of ad valorem taxes as specifically applied to the South Texas area I have divided between the distribution system and the transmission system properties. In other words, I took the taxes paid on the old Texas Border Gas Company properties and allocated them on a number of bases.

* * * * * * *

Q. Now, give us the methods you pursued with reference to allocating the transmission system operating expenses of the transmission properties serving Laredo.

A. Gas purchases are allocated direct to the city of Laredo; that is, taking the gas deliveries to the Laredo line, and allocating to the city limits of Laredo that proportionate part which the volume bears to the total volume delivered to the line, so that gas purchases is really not an allocated figure.

Q. That is a direct charge?

A. It is an actual figure. Transmission system opera- [fol. 449] tions and maintenance for the first four periods shown are allocated on the basis of volume delivered by the transmission system.

Q. Just in connection with that, Mr. Lewis, please explain how that operates?

A. The theory is in burdening each thousand cubic feet of gas transported with the same unit transportation cost and maintenance, or spreading the total cost of transporting gas and maintaining the lines to the various units transported.

Q. Do you think the use that method is a fair method of allocation to both the company and the city?

A. Yes, I think it is a fair method of allocation, because my study of the South Texas area indicated that there was a closer relationship between the volumes of gas delivered and the transmission system operating expenses than any other two known factors that I could find, and the relationship between those two was very close.

Q. Now, are there any other factors——

A. In connection with those two items, I had not given my allocation for the year ended December 31, 1933.

Q. All right; do that, then.

A. Transmission system operating expense was allocated on the basis of the transmission system operating ex- [fol. 450] penses of district 70, and the South Texas Gas Company for the last year that they were separated; in other words, The South Texas Gas Company, upon the transfer of the properties, was placed in District 70 of United Gas Public Service Company.

* * * * * * *

Mr. Coates: I beg your pardon—is that both transmission operations and maintenance to which you have been referring?

A. That is just transmission system operations. The transmission system maintenance has been allocated on the same basis.

* * * * * * *

Q. That concludes all allocations you made with reference to transmission operating expenses?

A. No, there is the general expense of the transmission system, which for the years ended June 30, 1929, June 30, 1930, June 30, 1931, and July 31, 1932, have been allocated on the basis of gross revenues, allocating to Laredo the proportionate part of the South Texas Gas Company general expense which the gross revenues from gas deliveries for the city of Laredo bear to the total revenues from gas deliveries for the South Texas Gas Company. For the year ended December 31, 1933, the district general expense has been allocated on the basis of proportion of the lineal miles and three inch equivalent miles, giving each item [fol. 451] equal weight in the allocation percentage. The general expense of the general office in Houston for the year ended December 31, 1933, has been allocated, first by taking the total general office expense, and allocating it as between transmission, distribution and production departments, as stated in connection with the distribution system expense. Then taking that part of the general expense relating to transmission properties, I have allocated the total transmission general expense to the South Texas area on the basis of lineal and three inch equivalent pipe,

and have allocated to the City of Laredo, from the South Texas area, upon the same basis.

* * * * * * *

Cross-examination.

Questions by Mr. Coates:

* * * * * * *

Q. Well, now, for the accounting periods which you have reflected in Plaintiff's Exhibit No. 8, do the operating revenues therein shown contain accounts which have not been paid, and proven to be uncollectible?

A. For the year ended December 31, 1933, there is included in customers expense the amount that the company set up during that year in the reserve account.

[fol. 452] Q. How much?

A. For the year ended December 31, 1933, there was set up as a provision for bad debts and charged to operations in the Laredo district, $2,633.67. I have allocated to the city limits of Laredo the proportionate part of the amount which the gas sales within the city limits of Laredo bear to the total gas sales for the district; so that I have included in my exhibit as a provision for bad debts, $1940.75. Now, there was an additional reserve for bad debts set up in the San Antonio transmission district of $815.00. I have allocated no part of that $815.00 to the city limits of Laredo for the reason that the transmission system does not have any credit sales in the city limits of Laredo.

Q. Do you know whether the transmission system has any losses with respect to bad debts?

A. If they do; even if they have them, they could not arise within the city limits of Laredo, because they have no credit customers within that boundary.

Q. Now, in what account classification does this item of $1940.75 appear in your operating statement for 1933, as contained in plaintiff's Exhibit 8?

A. It is included in customers expense in the total of $14,145.74.

[fol. 453] Q. I see; now, having included that item in this operating statement for 1933, haven't you, in another portion of this exhibit set forth the item on a page which you head as what you consider questionable items?

A. I have not.

Q. You have not. Well, have you done that with respect to any of the operating expense accounts for the period 1933?

A. No, sir.

Q. Have you done that for all of the other periods which are set forth in Plaintiff's Exhibit 8?

A. For the first four years shown in the Exhibit, I have set forth on page 10 a summary of questionable items.

Q. Now, you have not done that with respect to the operating statement for the year 1933?

A. No, sir; I have not.

Q. Why?

A. Because the major portion of the items set forth in the questionable items, was not susceptible of any verification on my part in prior years, for the reason that not all of the charges but most of them originated on the books of the operating companies of the United Gas System group. My examination was confined to the South Texas Gas Company and the Border Gas Company for the first four yearly periods mentioned, and all I saw in support [fol. 454] of those items was inter-company invoices, and I was not able or had no way of determining whether the items were proper or not.

* * * * * * *

Q. Now, with respect to the year ended July 31, 1932, Mr. Lewis, what amount of uncollectible accounts do you include in the operating expenses for that period?

A. $2,874.47.

Q. And is that included in the item of customers expense?

A. There is included in customers expense $2,773.64, and in general expense, $100.83.

Q. Now, does that represent the reserve, or actual uncollectibles for that twelve months period?

A. That represents the reserve.

Q. And that is the reserve which was set up for uncollectible accounts for that particular period. Do you know what the actual uncollectibles were within that accounting period, Mr. Lewis?

A. I believe I have that information, Mr. Coates. I might add that during that accounting period, there were charged off numerous accounts which had accumulated over a past

period of as much as two years prior thereto; they had neglected to charge off accounts, and they just cleaned them out in that period, so the charge-offs were much heavier in that year than normally they would be.

[fol. 455] Q. If you do not have that readily available, I will waive the question for the time being, and we can come back to it later. * * *

A. During that period I know they charged off a lot of accounts for as much as two years back, and used up all the reserves and had to set up some more.

Q. Now, Mr. Lewis, I believe you have included in this amount of $2,773.64, I believe you testified, in your operating statement for the year ended July, 1932?

A. There is a total of $2,874.47—there are two items, one in customers expense and the other in general expense.

Q. That is the reserve set up for that period?

A. That is the amount charged on the company's books to general expense and customers expense for the provision for bad debts.

Q. And the actual uncollectibles for that period were in excess of those amounts?

A. Yes, although they all did not originate in that period; some of them went back as far as 1929 and 1930.

* * * * * * *

Q. Well, what I asked you was whether or not you considered the amount set up in this reserve of $2,773.64 as being a fair and reasonable approximation of the uncollectible accounts for that period.

[fol. 456] A. From past experience of the company, as I testified, the reserves that they had set up prior to July 31, 1932, were not ample to care for the accounts they charged off during that year, and for that reason I am inclined to believe that the reserve as set up by the company is not excessive.

Q. Now then, why did you include that amount in the heading of questionable items on page 12 of Plaintiff's Exhibit 8? Does that represent your judgment?

A. Yes, it is questionable in that in rate controversies it is an item that is subject to controversy, and in order that the Commission and the courts or whoever might review these exhibits might know the item was there, I set out in that schedule those items which in my opinion were subject to some controversy in a rate controversy.

Q. Well now, not going into the matter of what is allowed or disallowed in rate controversies, but stating your judgment as an accountant, I believe your testimony has been that you do not regard that figure as excessive?

A. That is my testimony.

Q. And then it is your accounting judgment, that figure not being excessive, is properly included among the operating expense items?

[fol. 457] A. Mr. Coates, you realize——

Q. I am asking you for your accounting judgment.

. . . . . .

A. About ninety-nine per cent of these questions can't be answered "yes" or "no".

Q. Well, I am not trying to pin you down to a "yes" or "no" answer, but I don't want you to get on to what is proper for this Court or this jury to allow in a rate case. I am asking for your accounting judgment about a matter, Mr. Lewis, which is my concept of what is admissible testimony.

The Court: Listen: You forget what my judgment might be or the jury's judgment or anybody else's, but give your judgment about what ought to be done; that is what he is asking for.

A. I can't give that judgment except with certain qualifications, because this exhibit was not prepared to reflect the earnings of the company for the stockholders; it was not prepared for any purpose except to put figures before a Commission or a Court, and for that reason items which in my accounting practice I would say are fair charges to operations must be treated a little differently in that respect.

Q. Now, that is just your opinion about it?

[fol. 458] A. Yes, that is my opinion.

Q. Now, in the revenues reflected in the operating statement for the year ended July, 1932, there are amounts of bills sent but not collected, are there not, Mr. Lewis?

A. Well, not literally. Included in the revenues are the total amounts billed to the customers.

Q. Yes, sir.

A. Some of that may have been uncollected and some of it has been collected; some of it has possibly been charged

off. But that amount represents the total amount charged customers.

Q. Represents the total amount charged to customers, and does not purport to represent the total and exact amount collected?

A. It does not.

Q. Then in your experience in examining the business transactions of concerns of this sort as reflected by their books it does include some accounts which have not been paid?

A. I am sure that it includes some amounts which have not been paid.

• • • • • • •

[fol. 459] Q. Well, have you ascertained by analysis of this Defendant's Exhibit No. 3, for the twelve months period ended December, 1933, and a comparison with Plaintiff's Exhibit No. 8, wherein the principal differences lie between those exhibits • • •?

A. Some of it would be in the top figures and some would be in the methods of allocation, and some would be eliminations. As I said, I have made the comparison of the items shown on page 1 of Exhibit 3, but I have not made it of the sub-accounts, for the reason that I did not extend those sub-accounts in percentage allocations.

Q. Well, have you carried the analysis far enough so that in the case of each expense account as shown on page 1, you can state whether the difference between the figures which you derived and the figures which are set forth in the Company's books are due to bases of allocation or elimination, or both?

A. I think I can give you within a small figure the exact differences, if that is what you want.

Q. And what occasioned it?

A. Yes, sir.

• • • • • • •

A. The first item of Gas Purchases shown by Defendant's Exhibit 3—we will call it Production Expense, shown by [fol. 460] Defendant's Exhibit 3, to be $21,111.61, in Exhibit 8 the corresponding figure is $14,997.10.

• • • • • • •

A. The difference is $6,114.51. That difference is brought about, first, by a difference in the rate used for Gas Purchases in Defendant's Exhibit——

Q. How much is attributable to that, do you know?

• • • • • • •

A. Defendant's Exhibit 3 computed Gas Purchases at a rate of five cents per thousand cubic feet. I have used a rate of $.04257 per thousand cubic feet, or 4.257 cents.

Q. All right.

A. The testimony indicated that in Defendant's Exhibit 3 there was purchased for resale within the city limits of Laredo 355,623 M. C. F. The difference in that rate used is $.00743, which, applied to the volume of 355,623 M. C. F., gives us $2,642.27.

• • • • • • •

A. The difference brought about in here by the difference in the rate used is $2,642.27. Defendant's Exhibit 3 includes as purchased gas expense for that one-cent gathering charge in the Carolina-Tex field $3,422.53, which I have not included [fol. 461] in my Gas Purchases expense. There is an unaccounted for difference of $49.71——

• • • • • • •

A. Making a total difference of $6,114.51.

• • • • • • •

Q. And have you before you the total amount of operating expenses for the year 1933, exclusive of the well head price of gas attributable to distribution system operations?

A. Yes, I have that.

Q. And likewise the transmission system operations. If you give those two figures, identify them.

A. Do you want the top figure, or the amounts allocated to Laredo?

Q. Amounts allocated to Laredo—that is, exclusive of gas purchases expense.

A. I will give you the distribution system operations first.

• • • • • • •

A. I will have to make a computation * * * Total operating expense distribution system properties, exclusive of gas purchases, amounts to $67,022.74.

The Court: Repeat those figures.

A. $67,022.74.

[fol. 462] Mr. Bobbitt: That is for 1933?

A. Yes, sir.

Q. Now, for transmission, likewise exclusive of your figure for gas purchases.

A. Total operating expenses of the transmission system properties, exclusive of gas purchases, $11,278.62.

Q. Now, I had requested you about the time we recessed to make a comparison between the operating expenses by accounts for the year 1933 as shown in Plaintiff's Exhibit 8 with the operating expenses by accounts with as much break-down as you have, as reflected by Defendant's Exhibit 3, explaining the differences in so far as you are able to explain them.

* * * * * * *

A. The next expense caption appearing in Defendant's Exhibit 3, page 1, is transmission expenses, $10,131.28. That figure, in conformity with the book classification accounts, would have two sections: transmission system operations and transmission system maintenance. Referring to page 2 of Exhibit 3 for comparative purposes, I have considered the first six sub-accounts as transmission system operations and the remaining accounts under the section as transmission system maintenance, which conforms to the [fol. 463] classification used on the company books. That reclassification gives us, then, transmission system operations $6,729.62 and transmission system maintenance $3,401.66. In Plaintiffs' Exhibit 8 transmission system operation is shown at $2,511.69 and transmission system maintenance $1,645.39. Those are the comparative figures.

* * * * * * *

A. The next item is New Business Expense. The New Business Expense shown on Plaintiffs' Exhibit 8 amounts to $2,805.19; the New Business Expense as shown by Defendant's Exhibit 3 amounts to $6,077.61, or a net difference

of $3,272.42. In the Defendant's Exhibit 3 the item of $6,077.61 New Business Expense is made up as follows: Laredo District New Business Expense, $3,288.22; San Antonio District New Business Expense, $21.15; Houston General Office New Business Expense, $2,768.24. There is included in Plaintiffs' Exhibit 8 only an allocated part of the Laredo District New Business Expense. The San Antonio District is a transmission district, and could not have customers within the city limits of Laredo, and for that reason I have not included any part of the San Antonio District New Business Expense within the city limits of Laredo.

Q. That is the item of twenty-one dollars and——

[fol. 464] A. $21.15. The Houston Office General Expense I have not allocated to Laredo for the reason that Laredo, being an old established town, should not share in New Business Expense to the extent that the new distributions systems that have been put in during the year. So that I feel that New Business Expenses of the Houston General Office should be allocated to those districts where new distribution plants have been set up during the period under review, or immediately prior thereto. Those two items account for $2,789.30 of the difference. The net difference is $3,272.42, leaving an unaccounted for or unlocated difference of $483.03, which is all due to difference in allocation factors.

Q. All right; go ahead.

A. The next item is general office general expense, which is included on defendant's Exhibit 3 at $39,456.00. General office and general expense is shown on Plaintiff's Exhibit 8 in the amount of $27,876.42, or a net difference of $11,579.58. This difference is brought about first in the district general expense of the Laredo district. Defendant's Exhibit No. 3 includes $9,092.97, allocated to Laredo, whereas Plaintiff's Exhibit No. 8 includes $8,183.06 or a difference of $909.91. [fol. 465] This difference is due entirely to difference in the allocation factors. The San Antonio district——

Q. I thought for general expense you used the bases of apportionment set forth in Defendant's Exhibit 2?

A. That is in the general office general expense, but not in the district general expense. The San Antonio district general expense allocated to Laredo in Defendant's Exhibit 3 amounts to $898.29 as compared to $899.45 in Plaintiff's Exhibit 8. In other words, Plaintiff's Exhibit 8 contains $1.16 more San Antonio general expense than Defendant's

Exhibit 3. General office expenses I can not definitely tie down the differences until I have some information which has been requested, but I can give you the approximate figure.

Q. All right.

Mr. Bobbitt: Pardon me—when did you request that information, Mr. Lewis?

A. I requested it about ten days ago.

Mr. Bobbitt: And the gentlemen agreed to furnish it to you, didn't they, and will furnish it, I am sure?

A. Yes, they will furnish it, but I have not received it at this time.

Q. What is that information?

[fol. 466] A. Mr. Womack was asked to furnish the top starting figure of general expense charged to general expense on the general office books, account 113-38-2, and his adjustments to that total and his allocations, but I can give you the approximate differences here, as it is.

Q. All right; go ahead.

A. The transmission system general expense allocated from the Houston general office to the City of Laredo in Defendant's Exhibit 3, amount to $6,911.32. The Houston general office general expenses allocated to Laredo in Plaintiff's Exhibit 8 amount to $4,289.02, or a net difference of $2622.30. I have eliminated some general expense items in my allocation to Laredo which approximate that figure.

Q. Please state what they are.

A. I have eliminated from general expenses allocated from the general office of the transmission system—I will give you the net figures which have been allocated or would have been allocated to Laredo, had not the elimination been made, in order to reconcile with Defendant's Exhibit 3. I have eliminated law expenses in the amounts of $619.33 and $296.25 which represent the amounts cleared through [fol. 467] the clearing accounts 150 and 154. I have eliminated management fees in the amount of $648.82. I have eliminated valuation and regulatory commission expense in the amount of $440.66. Donations, in the amount of $36.53. Provision for uncollectible general office accounts, in the amount of $469.13. Another item of valuation and regulatory commission expense in the amount of $411.55. Compressor station expense in the amount of $139.22.

Q. Compressor station expense?

A. Yes, there are no compressor stations on the lines serving Laredo.

Q. And how much was that figure?

A. $139.22.

Q. This is for the year 1933?

A. Yes. There are some direct charges to account 113-38-2 after the clearings for additional general office bad debt reserves and legal expense, and I have eliminated the amount of $161.82.

Q. For both?

A. For those direct charges, yes. I do not have the analysis here, but it is all provision for bad debts and additional legal fees that were set up after the books were closed. Then there are two items of franchise require-
[fol. 468] ments, in the amounts of $15.86 and 65 cents, which I have eliminated. The total eliminations of the transmission district amount to $3,239.82. In Defendant's Exhibit 3 there was eliminated the item of provision for uncollectible accounts which on my computations would have been $469.13; so that my eliminations exceed the eliminations made in computing Defendant's Exhibit 3 in the amount of $2,769.69. The net difference in the transmission system general expense prorated from the general office amounts to $2622.30 so that all of the difference except approximately $147.00 has been accounted for.

I believe I stated that there was a difference of $8048.53 in the amount of distribution system general expense prorated from the general office. That difference is also explained principally by the elimination of certain items which I will give you. Law expense $1,745.19 and $1,551.28. Supervision and consultation, fees, $1,828.31. Valuation and regulatory commission expense, $1,238.47 and $1,079.80. Donations, $102.93. Provision for general office uncollectible accounts, $1,321.97. The total eliminations for the distribution system amount to $9,323.93. In the preparation of Defendant's Exhibit 3, there was eliminated from the
[fol. 469] general expense the item of uncollectible accounts, which under my computation would amount to $1,321.97.

Q. That is the general office?

A. Yes. Making a net elimination which was not made in Defendant's Exhibit 3 of $8,001.96, which accounts for

all except $47.00 of the difference. I believe that concludes the explanation of differences.

* * * * * * *

Q. Now, Mr. Lewis, why did you eliminate from transmission system general and distribution system general the item of law expense?

A. Because the items of law expense were some several thousand dollars more than they have been in prior years, and I have connected that law expense naturally with the valuation and regulatory commission expense.

Q. Did you find that any of the law expenses distributed to these properties had not been actually incurred?

A. I did not even check to see whether they had been incurred or not.

Q. And why did you eliminate the valuation and regulatory commission expense items?

A. Because that is an unusual expense that would not normally be incurred every year.

[fol. 470] Q. Did you attempt to ascertain the total amount of valuation and regulatory commission expense and law expense attributable to this rate controversy?

A. I did not. I might add, Mr. Coates, that that expense has been charged to a number of accounts on the company books, both capital and operating accounts, so that to determine the total that was paid for this particular case, I do not believe you would ever get it all together, and I believe that there will still be left in the accounts a considerable part of the expense of this case.

Q. But did you make any attempt to first ascertain the total amount of law and regulatory commission expense which had been incurred in connection with this investigation, and then distribute that expense over a period of years?

A. No, sir; I have not.

Q. And do you know whether the amounts which you have eliminated here amount to say one-tenth or one-fifth of the total law and regulatory commission expense?

A. No sir.

Q. Incurred in connection with this investigation?

A. No sir.

[fol. 471] Q. But as I understand it, what you have eliminated is all the law and regulatory commission expense which you found charged for this particular period?

A. In this particular general office account.

Q. In the general office account. Then you have made no attempt to do what is referred to in accounting parlance, to determine the amount of the law and regulatory commission expense and spread it over a period of years so it might be amortized by annual charges to operating expenses?

A. No. As I stated, that expense has been charged to numerous accounts on the books of the company, both operating accounts and capital accounts, and it would have required a considerable period of time to collect it all and determine just what the total is, and there is still in these accounts some of the expense attributable to this case.

Q. How much?

A. I don't know how much, but there are items of traveling expense and some of the salaries of the general office employees whose time has been devoted to this, and it would not be practical to attempt to collect it all.

Q. But you are unable to state how much is left in the operating expenses for this particular period which would be attributable to this particular investigation?

[fol. 472] A. Yes, I am unable to say that.

Q. Now, isn't it a fact Mr. Lewis, that that part of regulatory commission expense or valuation expense which was attributable to the making of the inventory of property in this case was the expense which was capitalized?

A. I don't know whether it would include all of the inventory expense or not, but I know there was a considerable portion of that inventory expense capitalized.

Q. And didn't you find the expenses attributable to mapping and inventory was capitalized on the theory that an inventory was a part of the property of the company?

A. As I stated, I do not know that the mapping and inventory expense was the portion that was capitalized. I know some part of it was capitalized, but I do not know what part was capitalized and what part was charged to operating expenses.

Q. You may have answered this question, but I will ask it once again and then leave it. You are unable to state whether the item regulatory commission expense and legal expense shown in this statement amount to less than or more than one-tenth of the total legal and regulatory commission expense attributable to this investigation?

A. No, I can not answer that.

[fol. 473] Q. And by the statement, I mean the defendant's Exhibit 3, being the operating statement for the year 1933.

A. I don't know what portion it would be.

Q. Do you regard it as proper accounting practice and recognized accounting practice to take an item such as regulatory commission expense, including both legal and other costs of a regulatory investigation, and spread that expense over a period of years and charge it to operating expenses in equal amounts over that period of years?

A. I consider it good accounting practice to take any unusual item and amortize it over a period of years, and I consider this an unusual item.

Q. Then if actually the amounts charged here for this operating period amount to, say, one-tenth of the total regulatory commission expense in connection with this investigation, you regard that as in accordance with good accounting practice?

A. Well, I would not tie myself to one-tenth.

Q. Well, one-fifth?

A. Well, I would not tie myself to that, either.

Q. What period of years would you take?

A. That is, for rate purposes—that is a matter for the courts to decide.

[fol. 474] Q. I agree with you entirely on that, and I am asking you about the correct and approved accounting practice.

A. The correct accounting practice would be to charge it off over a specified period, and ten years would be somewhere in the neighborhood of the correct period to charge.

* * * * * * *

Q. Did you or did you not state that after these properties, including the Jennings-Roma line and the Jennings-Pescadito line and the Carolina Texas-Laredo line were transferred, that those lines were set up and evaluated on the books of the United Gas Public Service Company at $934,798.02?

A. I stated that the journal voucher taking up the properties on the books of the United Gas Public Service Company charged fixed capital account in the amount of $934,000.00 some odd.

Q. And is it your testimony that all these properties were carried on to the books of the United Gas Public Service Company at only $934,000 plus?

A. I did not analyse all of the fixed property accounts of United Gas Public Service Company, but from the information furnished me by the accounting department and the construction accounting departments, that is the total [fol. 475] value at which they were taken over. Then there was an addition to that cost of some $55,000.00 later in the year.

Q. What was the information furnished you, Mr. Lewis?

A. It was a transcript of the fixed capital accounts, as affecting the old District 70 of the old South Texas properties.

Q. And did you go through that carefully?

A. The transcript as furnished to me?

Q. Yes.

A. It had the same balance——

Q. I say, did you go through it carefully?

A. It did not necessitate going through at all. It was there in schedule form of the items enumerated and I made no verification of it whatever.

Q. And did that item of $934,000.00 plus, include the Jennings-Roma line?

A. That was my impression. As I said, I asked them for this information in regard to all the old South Texas Gas Company properties, and that was the information furnished me, and I made no further verification of it, but it was my impression that it included all of the old South Texas Gas Company's properties.

[fol. 476] Q. And I believe you stated that the Jennings-Roma line—the cost of that line showed on the books of the South Texas Gas Company at $848,232 and some cents?

A. That was the first journal voucher, setting up the cost, and there were some later additions to it.

Q. Have you a description of that journal voucher, a copy of which was furnished to you, showing this entry of $934,000?

A. The description on the voucher setting up the properties recites that it is "to record acquisitions of properties, assets, and assumption of liabilities of South Texas Gas Company, under agreement dated October 1, 1932."

Q. What is the number of that?

A. I have here "J 10-156.

Q. Could that be Number "J 10-157"?

A. It is possible that I might have the wrong number here. That is just a memorandum that I have on the working paper.

Q. Did you examine that Journal Voucher sufficiently to ascertain whether at the time these properties were transferred from the South Texas Gas Company to the United Gas Public Service Company whether the United Gas Public Service Company held any of the common stock of the [fol. 477] South Texas Gas Company?

A. As I stated, I made no verification whatever of the Fixed Capital items.

Q. Did you ascertain whether at that time the United Gas Public Service Company likewise held bonds of the South Texas Gas Company?

A. I believe they did. I made no investigation along that line, though.

* * * * * * * *

Q. Did you ascertain whether the United Gas Public Service Company held any of the common stock of the South Texas Gas Company?

A. No; I did not.

Q. Did you ascertain whether the United Gas Public Service Company held any of the bonds of the South Texas Gas Company?

A. I am sure they held some of them, although I did not make any investigation to ascertain the amounts.

Q. You say you examined the voucher in all its parts?

A. No; I didn't say that I examined it in all its parts; I said "a copy here with this voucher reference on it."

Q. Does the copy that you have disclosed any common stock of the South Texas Gas Company?

[fol. 478] A. There is an item here of re-acquired credits. I did not attempt to reconcile the Journal entries.

Q. What does your copy show there with reference to common stock of the South Texas Gas Company held by United Gas Public Service Company at the time of the transfer of these properties?

A. There are not entries to capital stock reflected in this entry.

Q. What does it show with reference to the six and a half per cent first mortgage bonds of South Texas Gas Company held by United Gas Public Service Company?

A. There is an item on this journal voucher, a credit to long-term debt of $3,715,000.00. I don't know whether that is assumption of the old South Texas Gas Company bonds, or what the nature of it is.

Q. Is it your testimony here that the properties of the South Texas Gas Company were written down and entered on the books of the United Gas Public Service Company at $934,798.02?

A. It is my testimony that at the time the properties were transferred they were charged to the Fixed Capital accounts on the books of the United Gas Public Service Company, as per the Journal Voucher, $934,798.02.

[fol. 479] Q. And you give that as the result of your examination?

A. It is also the same figure reflected in the transcript of the account furnished to me, which purported to reflect all of the properties of the old South Texas Gas Company.

Q. It is your testimony here from your examination of this Voucher that this property was set up on the books of the United Gas Public Service Company at $934,798.02?

A. The voucher that I have seen and the transcript furnished me indicated that was it. There might have been some records that I did not see.

Q. You say that your notes there show no bonds?

A. I said that there was a credit on this Journal Voucher to long-term debt of $3,715,000.00. I don't know whether that is the old South Texas Gas Company's bonds that were assumed, or whether it was some additional bonds issued, or what. I made no effort to verify or analyze the entry, and when I asked for the reconcilement between the figures I was advised that such reconcilement was not available.

Q. Who advised you that?

A. I was advised that by the Accounting Department, and in going over this, particularly when I saw this entry and could not see through it all, I went to Mr. Womack, whom [fol. 480] I assumed had gone over the same accounts.

Q. Were you shown Journal Voucher J 10-157?

A. I don't know whether I was or not. If I saw the voucher I might know whether I had seen it.

* * * * * * *

Q. Now, Mr. Lewis, since the noon recess have you any explanation to make, other than that contained in the record, with reference to your testimony with respect to the figure of $934,798.02, which you identified as the amount set up on the books of the United Gas Public Service Company, representing the book costs of the transmission properties formerly belonging to South Texas Gas Company?

A. I have no other explanation to make, other than the transcript furnished me of the properties purporting to be the old South Texas area contained that figure, and in support of that I have testified that the Journal Voucher made at the time the properties were transferred charged the Fixed Capital Account with that amount.

Q. Did the transcript and this Journal Voucher indicate to you, using your judgment as an accountant, that that was the value of these properties fixed by the United Gas Public Service Company on its books?

A. No; I don't know whether that was the amount set [fol. 481] up for appraised value, or the amount purporting to be the costs, or addition to costs; and as I testified, I made no attempt to verify the item at all.

Q. Is it your testimony that it is either an appraised figure or the amount set up as costs?

A. It is my testimony that that is the amount that was charged to Fixed Capital at the time that the properties were transferred.

Q. And the entire amount?

A. That is the total amount that was charged at the time the properties were transferred, with the exception there was some fifty-five thousand dollars charged later.

* * * * * * *

Q. Have you anything in this operating statement for the year 1933 for gathering expense for the Carolina-Tex field?

A. No.

* * * * * * *

Q. Now, is the elimination of the amounts charged and paid for the use of the gathering system in the Carolina-Tex Field, does that represent your own judgment, Mr. Lewis?

A. Yes; after taking all the facts that I could find into consideration, I eliminated the gathering charge paid to the [fol. 482] Southern Gas Company in the Carolina-Texas Field.

* * * * * * *

Q. Mr. Lewis, why didn't you make an operating statement for the calendar year 1932?

A. Why didn't I?

Q. Yes, sir.

A. Because the period ending July 31, 1932 was selected for the purpose of the hearing before the Railroad Commission, and there was no further examination made until about the first of December, 1933, and we took the last twelve months period available at that time, and did not use the calendar year ending December 31, 1932.

Q. And you have made no examination of the Company's books for the period from July 31, 1932 to the end of 1932, have you?

A. Yes; in connection with the year ended October 31, 1933, I examined the last two months of 1932.

Q. Now, for the purposes of identification, if one would want to know the operating expenses attributable to transmission system operations, in your operating statement for the twelve months ended July, 1932, that can be found on page 5 of Plaintiff's Exhibit 8, can it not?

A. That is correct.

[fol. 483] Q. And if one wants to know your operating expenses attributable to distribution system operations for the twelve months ended July, 1932, that can be found on page 9 of Plaintiff's Exhibit 8, can it not?

A. Yes, sir.

* * * * * * *

Q. All right. Now, Mr. Lewis, turning to Plaintiff's Exhibit 4, how much did you deduct from reserve accruals to represent amounts accrued for the Jennings-Roma line?

A. At the time the properties were transferred to the United Gas Public Service Corporation on October 21, 1932, I had for depreciation allocated to the Jennings-Roma line, $56,590.74.

Q. Now, you show that the net additions to property, by which I take it you mean additions less retirements, at the

time the properties of the Border Gas Company were transferred to South Texas Gas Company, of $1,006,512.13, that date being April 10, 1928?

A. That is correct.

Q. And that as of the time these properties, eliminating the Jennings-Roma line were transferred to United Gas Public Service Company, the historical cost of the property, being net additions, was $1,049,735.38?

[fol. 484] A. That is correct.

Q. And that is gross additions less retirements?

A. Yes. In connection with the foot note—during the year ended July 31, 1932, there had been two substantial retirements which were credited out of fixed capital and the replacement was not charged into fixed capital until some time after the transfer of the properties to the United Gas Public Service Company.

Q. Well, have you picked up that replacement in your figures?

A. Yes, at a later date.

Q. And is that replacement picked up in the figure showing the net historical cost of $1,153,232.98 as of December 31, 1932?

A. That is correct.

Q. And is likewise carried into the figure showing historical cost of properties as of December 31, 1933, of $1,151,993.65?

A. That is correct.

Q. And all of these eliminate from consideration the Jennings-Roma line?

A. That is correct.

Q. And likewise any amount in the opening entry to this account, except the $166,000.00 figure which was testified [fol. 485] to by Mr. Kinney?

A. That is correct.

Q. Did you go over these books for any period prior to April 10, 1928?

A. No, sir, I did not.

Q. Well. during the period covered by you, has any amount been included in here for materials and supplies?

A. Yes.

Q. What amount?

A. Well, to give you a detail of the amounts charged in here——

Q. I am talking about what the materials and supplies were carried on hand by an operating company.

A. You mean the inventory of that?

Q. Yes.

A. No, there is nothing in here for that.

Q. Is there any amount included here for cash working capital?

A. No, sir.

* * * * * * *

Redirect examination.

Questions by Mr. Bobbitt:

* * * * * * *

Q. In connection with that item of advertising expense [fol. 486] you were interrogated about, and you made that elimination—as I understand you were asked the question whether or not that should not be allowed in there, because it was an effort to hold old customers as well as to try to secure new ones, and you testified you made certain eliminations of that item.

* * * * * * *

Q. Why did you make that elimination?

* * * * * * *

A. I eliminated the general office new business expense applicable to the transmission system——

The Court: He is talking about the advertising.

A. The item of advertising is included in the new business expense, so that anything I say about new business expense includes advertising. Now, I eliminated the general office new business expense applicable to the transmission system for the reason that the transmission system does not have any industrial customers within the city limits of Laredo, and have eliminated the new business expense applicable to the distribution system, for the reason that I feel the general office new business expense should be applied to the new distribution systems rather than to the old systems, like Laredo.

* * * * * * *

[fol. 487] Questions by Mr. Lange:

Q. Mr. Lewis, referring to Defendant's Exhibit 5, and particularly to Graph No. 3, we inquired of Mr. Womack to supply the volume of gas covering the four periods of June 30, 1929, June 30, 1930, June 30, 1931, and July 31, 1932. Has Mr. Womack supplied those figures?

A. Yes, sir.

Q. Do you have them there?

A. You refer to the volume?

Q. Yes, of the non-recurring revenues.

A. Yes, I have those.

Q. Will you please give them to the stenographer?

A. The volumes of gas included in Defendant's Exhibit 5 applicable to the non-recurring revenues as given us by Mr. Womack: for the year ended June 30, 1929, 356,623 M. C. F.; for the year ended June 30, 1930, 485,359 M. C. F.; for the year ended June 30, 1931, 295,139 M. C. F.; for the year ended July 31, 1932, 76,962 M. C. F.

Q. Those figures represent the volume of gas as indicated in Defendant's Exhibit 5, Graph 3, the stacks beginning at the left, the top of the stacks in white, do they not?

[fol. 488] A. The white portions of the stacks in Graph No. 3 represent non-recurring revenues. The figures I have just given represent the volumes of gas sold, which reflect the revenue shown in the white portion of the stacks in Graph No. 3.

Q. Now, referring to Plaintiffs' Exhibit 8, page 1, have you with the use of those figures furnished you by Mr. Womack adjusted first the gas sales appearing under Operating Revenues on your exhibit on page 1—Exhibit 8, page 1—gas sales?

A. I have computed what the total operating revenues would be after elimination of the non-recurring revenues, or the revenues designated by defendant's exhibit as non-recurring revenues.

Q. Have you that by years for the periods reflected in Exhibit 8?

A. Yes.

Q. Can you give us that for each year?

A. Yes.

* * * * * * *

Q. Will you give us those figures by years, Mr. Lewis?

A. The gross operating revenues as shown by Plaintiffs' Exhibit 8, after eliminating the items referred to in De-
[fol. 489] fendant's Exhibit 5 denominated non-recurring revenues, would be as follows: For the year ended June 30, 1929, $222,516.93; for the year ended June 30, '30, $237,-989.24; for the year ended June 30, 1931, $206,577.17; for the year ended July 31, 1932, $179,059.79; for the year ended December 31, 1933, $158,768.22.

Q. Now, will you give us the operating expenses, with the gas purchases eliminated, covering the alleged non-recurring revenues?

* * * * * * *

A. If the gas purchases pertaining to the gas sold to non-recurring customers were eliminated from Plaintiffs' Exhibit 8, the operating expenses would be: For the year ended June 30, 1929, $118,368.34; for the year ended June 30, 1930, $137,731.40; for the year ended June 30, 1931, $112,370.46; for the year ended July 31, 1932, $109,973.16; for the year ended December 31, 1933, $93,298.46.

Q. Now the net return for each year before depreciation and income tax?

A. The net return before depreciation and income tax, after elimination of the non-recurring revenues, or the items designated by Defendant's Exhibit 5 as non-recur-
[fol. 490] ring revenues, and after elimination of the purchase price of the gas represented in those non-recurring revenues, would be: $104,148.59 for the year ended June 30, 1929; $100,257.84 for the year ended June 30, 1930; $94,206.71 for the year ended June 30, 1931; $69,086.63 for the year ended July 31, 1932; $65,469.76 for the year ended December 31, 1933.

* * * * * * *

Q. Do you have those work-sheets?

A. The purchase invoices indicate that during the year ended July 31, 1932, there was only one month in which gas was delivered to the Laredo line from wells in the Jennings ar a.

Q. What month was that?

A. That was the month of August, 1932.

Q. Now, for the period—the year ended December 31, 1933. Oh, before we get to that, have you got the volume of that one delivery in M. C. F.?

A. The volume was 14,234 M. C. F., which was delivered from the Cuellar Brothers No. 1 Well. During the year ended December 31, 1933, there was delivered to the Laredo line at Pescadito Junction 27,431 M. C. F.

Q. Now, do you have the monthly deliveries for each—[fol. 491] have you the deliveries for each month?

A. Yes, I think I have that. There was delivered at Pescadito Junction to the Laredo lines in May, 1933, 1,293 M. C. F.; in April, 1933, 1,694 M. C. F., in March '33, 1,347 M. C. F., in February, 1933, 1,472 M. C. F., January, 1933; 1,638 M. C. F.

Q. Those were the total deliveries——

A. Just a moment.

Q. All right.

A. In November, 1933, 8,176 M. C. F., and in December, 1933, 11,811 M. C. F. That is all I have.

* * * * * * *

Recross-examination.

Questions by Mr. Coates:

* * * * * * *

Q. You examined, for the purpose of determining gas deliveries through the Jennings-Pescadito line for the twelve months ended July, 1932, the purchase invoices, did you?

A. The invoices which were made to the South Texas Gas Company by the company selling the gas.

Q. Is it your testimony that no gas came through the Jennings-Pescadito line for Laredo in the month of March, 1932?

[fol. 492] A. The purchase invoices of gas do not indicate any deliveries; there might have been some.

Q. Now, did you examine the charts on that Pescadito check-meter, or the records of such charts in the Measurement Department?

A. No, I didn't. I confined my examination in those years where the purchase invoices were rendered to the information contained on the invoices.

Q. And made no examination of the records in the Measurement Department to see whether any gas passed through that Pescadito check-meter in the month of March, 1932?

A. I didn't make any check at all of the Pescadito check-meter that year.

Q. Your attention was directed to the records in the Measurement Department as early as October or November, 1932, was it not, Mr. Lewis?

A. It was necessary this last year to examine those records, for the reason that since the South Texas Gas Company had merged with the United, and the Texas Border Gas Company also had merged with the United, the deliveries of gas to the town borders were no longer billed through invoices; so that in order to get the volumes delivered I had to check the Chart Department to get the information.

[fol. 493] Q. For what period?

A. For the year ended December 31, 1933.

Q. But you did not check it for the twelve months ended July—didn't check the records in the Measurement Department for the year ended July, 1932?

A. No, sir.

* * * * * * *

[fol. 494] HENRY E. ELROD, a witness for the Plaintiffs, being by the Court first duly sworn, testified as follows:

Direct examination.

Questions by Mr. Lange:

Q. Please state your name, age, your present place of residence and your occupation.

A. My name is Henry E. Elrod. I am 56 years old. I live in Houston, Texas, and I am a consulting engineer.

Q. Is that your occupation at the present time?

A. Yes.

Q. How long have you pursued that profession or occupation?

A. Practically since my graduation from school; or rather, I will modify that by saying that I graduated from school in 1901, and I followed my profession until 1912, when I entered the practice of my profession as a consulting engineer.

Q. What degrees, if any, do you hold, Mr. Elrod?

A. Bachelor of Science, in Electrical Engineering.

Q. From what school did you receive that degree?

A. From the Agricultural & Mechanical College of Texas.

Q. Will you state what has been your experience, or what character of work you have been engaged in from 1912, when you state you began actively to work in your profession?

[fol. 495] A. Municipal engineering. Municipal utilities, such as water works and sewers, and light and power plants, and appraisals and street paving, and every type of engineering that had to do with municipal welfare.

Q. Has that work been done entirely in behalf of municipalities or privately owned interests, as distinguishing municipal from privately owned interests.

A. It has always been in the public interests—that is, for the municipalities as against private interests.

Q. Will you state the projects and the character of the projects that you had occasion to do this work on or for, in that period beginning with 1912 to now?

A. Since 1912 and to the present time, I have constructed or designed and supervised the construction of thirty water works systems, thirteen dams for water supplies, eleven reservoirs for impounding water, thirteen water filtration plants, nine deep wells, ten water supply reports, twenty-five sewer systems, forty-seven sewage treatment plants, thirty-four municipal paving programs, four county highway systems, the appraisal of thirty-four public utilities, sixteen geologic reports, eighty-four technical reports of various characters, totaling 324 engineering commissions. [fol. 496] The details of the work on water works systems for various towns in Texas and California and sewer systems, I estimate I supervised the construction—not all personally of course, but generally under my supervision—of approximately three million lineal feet of trenching and backfilling or over five hundred miles. The dams I built consisted of earth works, concrete work, steel work and so forth. The public utility appraisals, were made as follows:

At Alba, Texas, water works system, for purchase. At Amarillo, Texas, water and light power company, for rate purposes—that was a federal case; that is, the case found its way into the federal court and I testified in that case. The appraisal of the Brunner, Texas, water works system for purchase by the City of Houston.

Coleman, Texas, the sewer system, for purchase.

Galveston, Texas; the Galveston electric and street railway properties, for rate purposes.

Brush Electric Company, at Galveston, light and power properties, for rate purposes.

The Galveston Gas Company, which was an artificial gas company, for rate purposes.

The Galveston Wharf Company, for purposes of taxation.

[fol. 497] Gorman, Texas, water works system, for purchase.

Honey Grove, Texas, water works system, for purchase.

Houston Gas & Fuel Company, for rate purposes.

The Southwestern Bell Telephone & Telegraph Companies for rate purposes.

The Home Telephone Company, automatic telephone, at Houston, for rate purposes.

Houston Light & Power Company, for rate purposes.

Houston Electric & Street Railway Company, for rate purposes.

Hubbard, Texas, water works system, for purchase.

Jacksonville, Florida, investigation of properties and operation of Jacksonville, Florida Municipal Light & Power Company, for City of Houston, for comparison.

Lockhart, Texas, water works system, for purchase.

Longview, Texas, Longview Light & Ice Company, for rate purposes.

Malone, Texas, water works system, for purchase.

Merkel, Texas, Electric Light & Power Company, for rate purposes.

Paducah, Kentucky, water works, for rate purposes.

Port Arthur gas works, for purchase; and that was an artificial gas works.

[fol. 498] Ranger, Texas; Ranger Water Company, for purchase.

San Angelo, Texas, electric light and water works, for purchase.

San Marcos, Texas; San Marcos Utility Company, for rate purposes, and that was water works.

Taylor, Texas; the sewer system, for purchase.

Temple, Texas; Temple Gas Light Company, for rate purposes, and that was an artificial gas plant.

Tyler, Texas; the sewer system for purchase, and the water works system for purchase.

Wichita Falls, Texas; the Wichita Falls Gas Company, for rate purposes.

Dallas, Texas; the Dallas Telephone Company for rate purposes.

The total values involved in the above mentioned appraisals were approximately $100,000,000.00.

Q. Mr. Elrod, you stated that you are engaged in that work or profession at this time?

A. Yes.

Q. Were you so engaged during the years of 1931 and 1932?

A. Yes.

Q. And also in 1933.

A. Yes.

[fol. 499] Q. Just state briefly what work, or when you began your work in connection with this Laredo rate case, and what you did.

Mr. Coates: May I ask Mr. Elrod a few questions along the line of his qualifications?

Mr. Lange: Yes, sir.

The Court: I think it would be permissible, yes.

Questions by Mr. Coates:

Q. Mr. Elrod, have you ever engaged in any responsible capacity in the operation of a natural gas property?

A. No sir.

Q. Have you ever been engaged in a responsible capacity in constructing a natural gas property?

A. No, sir.

Q. And have you ever been engaged in a responsible capacity in the purchase of gas pipe or fittings?

A. No, sir.

Q. Mr. Elrod, you say you are a consulting engineer. Now are you an accountant?

A. No, sir.

Q. And you have had no experience as a practical operating man of gas properties?

A. No, sir.

[fol. 500] Q. Are you a lawyer?

A. No, sir.

Q. Then you qualify here simply as a consulting engineer?

A. Yes.

Mr. Coates: We have an objection, but we will make it at the proper time.

The Court: All right; go ahead, gentlemen.

* * * * * * *

Questions by Mr. Lange:

A. I was first employed by the City of Laredo, by contract, on February 17, 1932, to assist the City's engineer in the preparation of an appraisal of the properties of the Texas Border Gas Company and the South Texas Gas Company, which are units of the United Gas System. At that time, the appraisal had already been made by the City Engineer, and I was simply to act as consultant with him in connection therewith and its presentation at a hearing to be held before the Railroad Commission. My second employment by the City of Laredo, was in the month of October, 1932, at which time I was engaged to prepare a new apprraisal of the properties of the two companies just mentioned.

Q. And then what character of work, if any, did you do in connection with this appraisal.

[fol. 501] A. I prepared an appraisal of the properties, based upon an inventory that was prepared by Mr. Neff and composed with the company's inventory, so that the items of property were reconciled.

Q. Have you since that time prepared an appraisal of the properties serving Laredo?

A. Yes, I have. Late in November, I was called upon by the City.

Q. November of what year?

A. November of the past year, 1933; I was called upon by the City of Laredo to prepare a new appraisal on the basis of prices as of December 31, 1933, and I prepared that inventory—or rather, that appraisal.

Q. I will ask you whether this is the appraisal which you have prepared?

A. Yes, it is.

Mr. Lange: We desire to offer it in evidence.

Mr. Coates: One or two further questions, for the purpose of laying a predicate. Mr. Elrod, does the appraisal which you have identified and which you hold in your hand, represent your engineering estimate as to what it would

cost to reproduce similar properties, if built under existing conditions, at the present time?

[fol. 502] A. No, it does not. It purports to represnt what the present properties are worth, as of December 31, 1933. That is, the identical properties.

Mr. Coates: Does it purport to represent the historical cost of those properties?

A. No, sir——

. . . . . .

A. It does purport to show, or rather the properties were priced out in view of the history of the company. It is not a historical reproduction, however. It is priced out on the basis of prices as of December 31, 1933, in view of the history of the company as it existed from 1910 on.

(Defendant's objections to the introduction of plaintiffs' exhibit 9 because the witness Elrod was not shown qualified to make an appraisal of natural gas properties, because the exhibit was an attempt to vary and impeach the Commission's order sued upon by plaintiffs, and because the exhibit reflected neither reproduction cost nor historical cost, but purported to be the conclusion of the witness as to fair value, were all overruled; defendent excepts.)

[fol. 503] The following are pages 1800-1803, both inclusive, page 1806, and page 1865, from S. F. Vol. III.

[fol. 504] PLAINTIFF'S EXHIBIT No. 9

General Summary and Allocation

	Cost New	% Condition	Cost, New Less Depr.
Transmission System	$359,128		$263,063
Distribution System	597,736		470,488
Totals	$956,864		$733,551
Less:—			
Land, Leases & Rights-of-way	10,475		10,475
Balances	$946,389		$723,076
Materials & Supplies	19,744		19,744
Balances	$926,645	75.90	$703,332
Included with and incorporated in this amount, as "Expense of Purchase & Storage," and deducted as being excessive	$28,711	75.90	$21,792
Balances	$897,934		$681,540
Add back for Land, Leases & R. O. W.	10,475		10,475
Add for Reasonable Purchase & Storage	7,500		5,693
Totals	$915,909		$697,708

Plaintiffs' Exhibit No. 9—Continued

		Cost of Reproduction	
		New	Less Depr.
Less Items Already Allocated:			
Furniture & Fixtures	10,310		7,320
Auto & Equipment	5,807		1,724
Tools & Equipment	2,321		1,741
	$18,438		$10,785
Balance for Allocation	$897,471		$686,923
Allocated to Laredo, 85.27%	$765,274		$585,739
Add Items Already Allocated	18,438		10,785
Totals Allocated to Laredo	$783,712		$596,524
Preliminary & Organization, 2%	15,674		15,674
Engineering & Supervision, 2½%	19,593		14,870
Administration & Legal, 1½%	11,756		8,923
Taxes During Construction, ½%	3,919		3,919
Interest During Construction, 3½%	27,430		20,819
[fol. 505]			
Materials & Supplies	19,744		19,744
Working Cash, 45 days of Annual Operation Expense less Gas Purchases	9,788		9,788
Totals	$891,616		$690,261
$690,261			
[fol. 506] Summary:			
Transmission System of South Texas Gas Company		$359,128	$263,063
Distribution System of Texas Border Gas Company		597,736	470,488
Total		$956,864	$733,551

[fol. 507] Pages 1804-1805 of S. F. Vol. III omitted.

[fol. 508]

Summary

Distribution—Laredo

Property Inside City Limits

		Cost New	Less Depr.
Acct. 326	Land	401	401
Acct. 329	District Regulator & Measuring Station Structures	676	515
Acct. 330	Other Distribution System Structures	1,145	853
Acct. 332	Measuring & Regulating Equipment	1,830	1,481
Acct. 333	Distribution Line Equipment—Intermediate Low Pressure	396,010	313,385
Acct. 334	Services:		
	A—All except Industrial	80,986	62,359
	B—Industrial	8,672	6,677
Acct. 335 & 336	Meters & Meter Installations (Inside City Limits)	62,201	47,895
Acct. 337	Service Regulators	607	468

Plaintiffs' Exhibit No. 9—Continued

	Cost New	Less Depr.
Acct. 338 Other Distribution System Equipment:		
A—Industrial Installations	9,383	8,282
B—Furniture & Fixtures	10,310	7,320
C—Automotive Equipment	5,807	1,724
E—Tools & Equipment	2,321	1,741
Total, Except Material & Supplies	580,349	453,101
Acct. 338 Other Distribution System Equipment:		
D—Material & Supplies	17,387	17,387
Total—Distribution System—Laredo	597,736	470,488

[fol. 509] Pages 1807-1864, both inclusive, from S. F. Vol. III omitted.

[fol. 510] Transmission

Summary

	Cost New	Depr.
Acct. 316 Land	4,350	4,350
Acct. 318 Rights-of-Way	5,724	5,724
Acct. 320 Transmission Regulating & Measuring Station Structures	1,712	1,431
Acct. 321 Other Transmission System Structures	6,263	4,746
Acct. 323 Transmission System Regulating and Measuring Station Equipment	6,912	5,738
Acct. 324 Transmission Line Equipment	317,852	227,695
Acct. 325 Other Transmission System Equipment:		
A—Farm Taps	105	87
B—Telephone System	11,828	10,954
C—Miscellaneous	246	196
D—Furniture & Fixtures	666	268
E—Automotive Equipment	964	290
F—Tools & Equipment	149	127
Total, Except Material & Supplies	356,771	260,706
Material & Supplies	2,357	2,357
Total—Transmission System	359,128	263,063

[fol. 511] Pages 1866 to end of Plaintiffs' Exhibit 9 omitted.

[fol. 512] Questions by Mr. Lange:

Q. Mr. Elrod, please state how you proceeded in making the appraisal of the properties of the Texas Border and South Texas Gas Company, predecessor of the United Gas Public Service Company, now the owners of the property.

Mr. Coates: It is understood that our objection goes to this line of testimony.

A. In making the appraisal of the properties I endeavored to reproduce identical properties in the manner that

they were originally produced, at present day prices; in other words, taking the properties as I found them, and in the light of such history and knowledge that I had of them, I applied the current prices to represent as nearly as possible the fair value of the Gas Company's properties as of December 31, 1933, in the reproduction of a substituted plant.

(Defendant objects to testimony that exhibit represents fair value; objection overruled.)

Q. Now, Mr. Elrod, in proceeding to make that appraisal did you use prices of labor and material as of December 31, 1933?

A. I did.

* * * * * * *

[fol. 513] Q. On the transmission system, what does page B reflect on that?

A. It reflects the cost new, $359,128.00, and the depreciated cost, $263,063.00.

Q. And distribution system?

A. Distribution system, $597,736.00 new and $470,488.00 depreciated, or a total of $956,864.00 new and $733,551.00 depreciated.

Q. To those figures, how did you apply the allocation factors?

A. The last item about half way down the page before the division mark is noted Balance for Allocation of $897,-471.00.

Q. How did you arrive at that total?

A. That was arrived at by deducting from the original total of $956,864.00 sums for property already allocated, which was furniture and fixtures, auto and equipment, and tools and equipment, and deduction of an amount for excessive purchase and storage, leaving a balance of $897,-471.00 to be allocated to Laredo on the basis of 85.27 per cent.

Q. $897,471.00 reflects the cost new——

A. Cost new.

Q. —as of December 31, 1933.

[fol. 514] A. Yes.

Q. And the figure $686,923.00 represents the per cent condition—that is, the cost new less depreciation?

A. Yes.

* * * * * * *

Q. Now, the figure $690,261.00, that is under the column headed cost new less depreciation. That is the depreciation amount of the $891,616.00?

A. Yes, that is the cost new less depreciation.

Q. Now, Mr. Elrod, in appraising these properties, I will ask you as an engineer, how did you appraise these properties?

A. I appraised them as a going entity, as properties in operation with business attached and connected to gas wells.

Q. In making this appraisal, Mr. Elrod, of these properties, you did not in this appraisal include any items composing what is known as the Jennings Pescadito transmission line, did you?

A. No, I did not.

Q. Why—give your reasons fully as an engineer.

A. In my judgment as an engineer and in view of my [fol. 515] study of the situation and of the company's properties, I did not feel that the Jennings Pescadito line was necessary to serve the city of Laredo, and the cost of maintenance was a burden that should not be imposed upon the city and the city should not be called upon to bear the principal of the cost, as a part of the rate base.

(Defendant objects; objection overruled.)

* * * * * * *

Q. Mr. Elrod, in connection with the preparation of the appraisal reflected in plaintiff's exhibit 9, you did not set up a separate item for going value, did you?

A. No, sir.

Q. Why?

A. Because I did not consider that there was any basis for a going value. My judgment in having allowed what I conceived a full structure overhead cost——

(Defendant objects.)

The Court: Now, you are changing that word "allowed" to "estimated" there?

Mr. Lange: Yes, sir.

A. Now, where there had been no evidence of expendi- [fol. 516] tures for going concern values, I have not credited the estimate with going concern value.

Q. You made no separate allowance for that item?

A. Made no separate allowance for it.

Q. I mean no separate provision.

A. I beg your pardon again. No separate provision. In my estimates after having considered that the property was evaluated on the basis of a concern that was operating—an operating entity and going and having business attached. When the company started off its operations, it had business.

* * * * * * *

Cross-examination.

Questions by Mr. Coates:

Q. Mr. Elrod, referring to page B of Plaintiffs' Exhibit 9, and to that item on page B styled Engineering and Supervision, 2½ per cent, $19,593.00,—do I understand it to be your testimony that 2½ per cent of the direct construction costs, or $19,593.00, constitutes and represents your engineering judgment of the amount of costs which would be incurred for Engineering and Supervision if properties similar to these were to be reconstructed today?

[fol. 517] A. I believe I testified on yesterday that I had not made such an estimate, but that my estimate was made on the basis of these particular properties, or this particular property, constructed as it was constructed; that in 1910 $167,000.00 worth of the property was constructed, and after that time during the operations of the property, up to 1928——

* * * * * * *

(Question re-read to witness.)

Q. Can you answer that question, Mr. Elrod?

* * * * * * *

A. If the properties were blotted out and had to be reconstructed new to-day, starting from 'scratch', so to speak, I believe that the engineering service would cost more.

Q. How much more?

A. I think the fee would probably be on the total properties something like three and one-half per cent.

* * * * * * *

Q. Then that part of Plaintiffs' Exhibit 9 relating to transmission system properties, as I understand you, does not represent your engineering estimate of what it would cost to build a line similar in all respects to that transmission line of built today?

[fol. 518] A. Not exactly. My estimate reflects what it would cost, or rather what the identical properties there cost as of January 31, 1933.

Mr. Bobbitt: December 31.

A. December 31, 1933.

Q. Now does Plaintiffs' Exhibit 9, in so far as it relates to distribution system properties, represent your engineering estimate of what it would cost to reproduce and build and construct a distribution system similar in all respects to that now existing in Laredo if built today?

A. No; my estimate is only of what the existing properties—the identical properties—are worth as of December 31, 1933.

(Defendant renews prior objections taken to plaintiffs' exhibit 9; objection overruled.)

Q. Now, Mr. Elrod, as a matter of fact, isn't it your opinion that the cost of engineering and engineering supervision on this job, if these properties were reconstructed today, would be five percent?

A. It would be rather difficult to say what the costs would be under those circumstances, if these properties were to be reconstructed. Perhaps the engineering would be—well. I just don't know.

[fol. 519] Q. You just don't know?

A. No.

Q. Well, it is something that has been done many times in the last decade, has it not—the building of a transmission system into a town and the building of a distribution system?

A. Yes, but the reconstructing of this system is an entirely different thing, a different proposition. What it would cost to build a transmission system and a distribution system of similar magnitude new, would perhaps cost around 3½ per cent. • • •

Q. Well, I am asking you your judgment on it.

A. Well, my judgment is it could be done for that. I would do it for that.

Q. And isn't it a fact that you have set up two and one-

half percent of direct construction costs in Plaintiff's Exhibit 9 because someone has told you that as this property was constructed historically, over a period of 23 years, a part of the engineering work was done by engineers carried on the operating payroll?

A. Yes.

Q. That is a fact. And isn't it your judgment (and I don't think you gave a direct answer to this question) that if [fol. 520] similar properties to these were reconstructed today the cost of engineering and engineering supervision would be five per cent?

Mr. Bobbitt: Are you interrogating from a transcript of the testimony had before the Commission, Mr. Coates?

Mr. Coates: No, but I am just before doing it.

. . . . . .

A. The design and supervision of construction of work, transmission lines and distribution system of the magnitude of these lines, it probably would be.

. . . . . .

Q. Now, Mr. Elrod, in the course of a construction job such as reconstructing these properties, when would the cost of the engineering be incurred?

A. It would be incurred prior to the construction of the properties.

Q. Prior to the construction of the properties. And when would the preliminary and organization expense be incurred?

A. Prior to the construction of the properties.

Q. And what, with respect to the administrative and legal expense?

A. The same thing.

[fol. 521] Q. And in other words, the money would have to be provided and paid out for those costs, prior to the construction of the work. Now, have you included herein in your estimate of interest during construction, any interest during construction on the cost of engineering and supervision, preliminary and organization expense, or administration and legal expense?

A. No, sir.

Q. Those are an inevitable and concommitant part of the costs of construction, are they not?

A. Yes.

Q. And you pay out money for them in the same way as you pay out money for pipe and meters, do you not?

A. Yes.

Q. And you have computed your interest during construction on materials and costs of installation—that is, direct costs of installation, haven't you?

A. Yes.

Q. But you have not computed any interest during construction on the undistributed construction costs?

A. No.

Q. Now, Mr. Elrod, isn't it a fact that what you did here was to simply take ten per cent of the direct construction [fol. 522] costs and divide up that ten per cent arbitrarily between the five items which you show for undistributed construction costs?

A. I believe I so testified in the original case, and that is a fact.

Q. That is a fact now, is it?

A. Yes.

Q. And have you made any analysis or breakdown of the operations and functions causing costs which would enter into each classification of undistributed costs?

A. No.

* * * * * * *

Q. Is it based on any analysis of undistributed construction costs actually incurred in connection with the construction of natural gas properties?

A. No. I might say that it is based upon my judgment as an engineer as to what these costs would be in similar cases.

Q. Now, the transmission line equipment constitutes ninety per cent or better of the entire transmission system properties, does it not—that is, the pipe lines and the fittings?

* * * * * * *

[fol. 523] A. It is around ninety percent.

Q. Now, in the same way in connection with the distribution system properties, as reflected by the distribution

system section of Plaintiff's Exhibit 9, the direct costs new less depreciation are $490,488.00 are they not?

A. Yes.

Q. And of that amount, the costs of distribution line equipment and services and meters constitute some $430,000.00 or approximately ninety percent of that item, do they not?

A. Yes.

* * * * * * *

Q. Mr. Elrod, you made an appraisal of these same properties a year or more ago, did you not?

A. I did.

Q. And have you made an inspection of the distribution system properties since that time?

A. Visible properties, yes.

* * * * * * *

Q. Have you made an inspection of the mains and services?

A. No.

Q. And do you show in Plaintiff's Exhibit 9 the distribution system properties to be in the same percent condition as you showed them a year ago?

[fol. 524] A. No.

Q. What, with respect to the mains and services, is the difference between what you found a year ago and what you find now?

A. As a whole, I do not believe I have reduced that to percentages.

Q. I am referring now to the mains and services and not the remaining ten percent of the property. As a matter of fact, Mr. Elrod, haven't you simply reduced the percent condition of the mains under paving three percent, and the percent condition of the mains not under paving by five percent?

A. I have not reduced those to percentages, but I will do so.

Q. Are you unable to state whether or not that is a fact—that you simply reduced the mains under paving three percent and the mains not under paving five percent?

A. I do not know that that is absolutely correct.

Q. And what percentage reduction, to show the percent condition as at the present date, have you made in regard to the transmission lines?

A. I have not reduced that to over-all percentages.

Q. I am not asking you for the entire property but I am asking you simply for the transmission lines themselves. [fol. 525] A. I beg your pardon for taking so long, but this book was taken to pieces and put back, and I do not seem to find it by the index. That is correct.

. . . . . .

Q. What, in your judgment, is the best way of getting the fair over-all average condition of a transmission system line that is buried—that is, what is the best way of getting an average condition by inspection?

A. Solely by inspection, there is no best way according to my judgment.

Q. Isn't the better way to first ascertain points equally spaced at intervals along the line and then dig a test hole and make inspections at those particular points.

A. I think not. I think the better way is to go over the terrain and find, if possible, the hot spots, and test the lines particularly in those hot spots, where they are expected to be in worse condition than they would be in other places.

Q. In other words, go over the line and look for the places where you can expect the greater amount of corrosion?

A. Yes, sir.

Q. And do you likewise think that another good way of getting a fair over-all average per cent condition of the property is to inspect the pipe at those points where it has [fol. 526] been opened for repair?

A. Yes, I think that is a good way of finding out the condition. Any place that you can inspect a pipe where it is, either good or bad, is a desirable place to find out. The more inspections you make the more nearly you come to an accurate determination, if such a thing is possible by inspection.

Q. Then, do you think that inspecting the line at hot spots where a greater corrosion is to be anticipated, and inspecting it at points where it has been opened for repair is a better method of getting a fair over-all average per cent condition of the property than digging test holes at evenly spaced points along the line?

A. I certainly do.

Q. And that was the method that you have outlined—that is, inspecting the pipe line where it has been repaired and where the hot spots were—that was the method, generally speaking, followed in inspecting this Carolina-Tex-Laredo line?

A. No, we dug special test holes——

Q. How many?

. . . . . .

A. I testified that I didn't know. I presume there were [fol. 527] fifty dug at my direction along the line between the Carolina-Tex Field and Laredo City Gate.

Q. And were those dug at regular intervals?

A. No, they were dug at random.

Q. And in hot spots, principally?

A. No, just at random, without any reference to the hot spots.

Q. And did you inspect those fifty test holes?

. . . . . .

A. Yes, sir, I inspected the pipe at every test hole that was dug, whether I had it dug or not.

Q. And when were those test holes dug?

. . . . . .

A. They were dug in 1932.

Q. All of them prior to the Commission hearing?

A. Yes, sir.

Q. Have any special test holes been dug along that line and inspected by you since the Commission hearing?

A. No, sir.

Q. Now, in what instances in this Pescadito Junction Aguilares line did the result of your inspection cause you to change from your straight line age life method of three per cent a year?

. . . . . .

[fol. 528] A. I didn't know that I did change.

Q. Did you change in any respect from the three per cent a year, as the result of inspection?

. . . . . .

Mr. Fitzhugh: May I ask a question, please, sir?

The Court: Yes, sir.

Mr. Fitzhugh: Mr. Elrod, is that the correct designation for the method that you used for determining depreciation, straight line age life method?

A. I have used a combination of age and life and inspection.

* * * * * * *

Q. And can you point to any particular instance in Plaintiff's Exhibit 9 where the result of your inspection has caused you to change from your application of your age life computation?

A. I don't know that I can, offhand.

Q. You are thoroughly familiar with this exhibit, having made it, are you not?

A. Yes, sir.

Q. But at this time you are unable to point to any place relating to transmission lines where your inspection has changed the age life computation?

A. No.

* * * * * * *

[fol. 529] A. I relied upon their judgment, to mould my judgment.

Q. Then, it represents your judgment as moulded by their judgment, does it?

A. Aided by my inspection and examination of the pipe and the conditions that surrounded it, with a number of soil tests.

Q. Then you didn't refer to any handbook or anything of that sort—didn't take this age life table from any handbook?

A. No.

* * * * * * *

Q. Mr. Elrod, you used as cost of excavation on transmission lines five cents per foot of trench, did you not?

A. Yes, sir.

Q. That was the same figure that you used when you testified before the Railroad Commission?

A. Yes, sir.

Q. And that is estimated on the basis of the performance of a Buckeye No. 2 Trencher, isn't it?

A. No. 32?

Q. Buckeye No. 32 Trencher.

A. Just a moment; I will see. (Witness consults data.) Yes, sir, No. 32.

* * * * * * *

[fol. 530] Q. Now, what type and character of truck did you base your estimate of performance on?

A. I used a 1-ton truck with an average speed of 16 miles per hour.

* * * * * * *

Q. Now, in computing your price of pipe f. o. b. Laredo or f. o. b. delivery point, did you compute that price in carload lots?

A. Yes, sir.

Q. On the basis of quantity purchases?

A. Yes, sir.

Q. And under the latest quotations that have been given you by pipe manufacturers?

A. Yes, sir.

Q. And with respect to dresser couplings did you figure that on the basis of quantity purchases?

A. Yes, sir.

Q. And on the basis of delivering dresser couplings in carload lots?

A. Yes, sir.

Q. I believe you have previously testified, Mr. Elrod, that in making the appraisal of these properties you endeavored [fol. 531] to reproduce the identical properties in the manner in which they were originally produced?

A. Yes, sir.

Q. Did you ascertain whether these trenchers—as this property was originally produced were cut with a No. 32 Buckeye Trencher?

A. No, sir.

Q. And did you find out whether any of them were hand excavation?

A. No, sir.

Q. Then to that extent you have varied from producing them in the manner in which they were originally produced, have you not?

A. No; that information was not available, and I had to use my best judgment as to——

Q. You had to use your best judgment?

A. Yes, sir.

Q. Well, do you know whether there were any Buckeye No. 32 models back in 1922?

A. I don't know whether there were any Buckeye 32's in '22.

Q. The modern type is more efficient than the old type, is it not?

[fol. 532] A. Yes, I suspect it is. Most modern machinery is more efficient than older machinery.

Q. And did you ascertain whether all this pipe was hauled out to location, at the side of the ditch, with trucks, or some of it with mules and wagons?

A. No, I didn't. I suspect some of it was hauled by mules and wagons, but I have no way of knowing.

Q. And so you used or based your estimate on hauling it with modern type trucks?

A. Yes, sir.

Q. Did you ascertain whether, as these properties were originally produced, the pipe was all sent down in carload lots?

A. I had no way of ascertaining that information, of course.

Q. You get a lower price for pipe in carload lots, don't you?

A. Yes, sir.

Q. Did you ascertain whether the dresser couplings came in carload lots or l. c. l. lots—less than carload lots?

A. I had no way, of course, of ascertaining that information.

Q. And your freight rate on dresser couplings in carload lots is less than it would be in less than carload lots, is it not?

A. Yes, sir.

Q. Well, did you compute this cost of hauling on the basis of hauling over highways of the kind and character that [fol. 533] existed when this property was originally produced?

A. No, I think my figures fairly represent the hauling, regardless of how it was hauled.

Q. Then to that extent you have either been without knowledge or have varied from your concept of producing

these properties as they were originally produced, did you not?

A. We have had to exercise the best judgment that we could in arriving at the prices for the various elements of property and the manner in which it was done. Where it was possible to obtain information as to how the construction was originally done, that information was made use of; and where any bit of history could be utilized, it was utilized.

Q. But in respect to quantity purchases, hauling by trucks, cutting ditches by trenchers, and carload haulings, why, those all may have a lower price?

A. Yes.

* * * * * * *

Q. Did I understand you to testify that you had included going value in Plaintiff's Exhibit 9?

A. I had not included it as a separate item.

Q. Have you included going value in the appraisal of these properties as shown by Plaintiff's Exhibit 9?

A. No, sir.

* * * * * * *

[fol. 534] Q. Now, with respect to distribution mains, what age life did you use?

A. That was given two per cent.

Q. That is, 50 year life on what mains?

A. On the pipe under pavement.

Q. What on pipe not under pavement?

A. On the black pipe, we gave it 45 per cent condition, and the protected pipe, 72 per cent condition—that is, the painted pipe; and the enameled and wrapped pipe, 85 per cent condition.

Q. What age life did you use?

A. We did not use any age life on it, because we did not know what the age life was.

Q. Now, when you came to bring your appraisal for 1932 down to 1933, on mains under paving, how much did you deduct?

A. We took off five per cent.

Q. On mains under paving?

A. No, we took off three per cent.

Q. Why did you change from two per cent a year to three per cent a year?

A. Well, we had a year and a half difference.

* * * * * * *

Q. Did you inspect that pipe in July, 1932?

[fol. 535] A. It was inspected prior to July, 1932.

Q. Prior to July, 1932. So that is really a year and a half?

A. Yes.

Q. Now, what did you take off on this pipe that was not under paving?

A. I think we took off five per cent on the black pipe.

Q. What span of months does that cover?

A. That covers the same span of months.

Q. And what age life is that?

A. Well, I don't think we had any age life on it. I think that pipe was arrived at or the per cent condition was arrived at by inspection and the use of a supposed or a guessed at age and life.

Q. All right; now did you use age-life to deduct this five per cent to show 1933 over 1932?

A. I don't think we did. I think we just arbitrarily reduced the figures as they are shown.

Q. Just arbitrarily reduced them five per cent for all mains not under paving?

A. Yes.

* * * * * * *

Q. But the mathematical calculation gone through with, was to deduct five per cent from the per cent condition you [fol. 536] gave for 1932?

A. From the pipe not under pavement, and that was based on the fact that the pipe not under pavement, the unprotected pipe, was going out in about twenty years. When I made inspections of the pipe early in 1932, we found pipe being removed from the system at that time that had been put in in 1910 or 1911.

Q. And so you got your twenty year age life period, at the rate of five per cent, per annum, from that data, did you?

A. Yes. That is, in part.

Q. And the fifty year life for mains under paving, that is just arrived at on the basis of your best judgment?

A. And it was conditioned pipe. That is, it was well prepared, cleaned, painted and wrapped and it should have a life under pavement of fifty years.

* * * * * * *

Q. Now, does the reconditioning of a pipe line—that is, where you strip the line, take up the pipe, cut the welds, clean, sand-blast, cull, prime, coat and turn over the pipe and put it back in the ditch as a reconditioned job; does that offset loss in value of that line?

A. Not entirely.

Q. Does it tend to offset it?

[fol. 537] A. Yes; of course any maintenance tends to offset the depreciation of the pipe.

* * * * * * *

Q. Now, does the installation in the line of a substantial number of replacements, that is, new joints and stretches of pipe, raise its per cent condition?

A. Yes; it does. I will qualify that by saying that the installation of new joints in a line—that is, how much it will raise its condition depends on how well the pipe has been maintained, and how frequently it has to be done. For instance, I think, in this particular territory, or rather in Laredo, where the pipe laid is under discussion, that in certain parts of the country the soil is of such a corrosive nature, that this work of reconditioning and replacing and adding joints from time to time is almost a continuous process, or used to be, and the pipe will stand just so much of it.

* * * * * * *

Q. I say, doesn't the application of the life table of 33 years, taking into account, as it does, the average span of years from date of installation to date of retirement, and taking into account only current maintenance to these lines here, ignore the extent to which the per cent condition of [fol. 538] those lines has been raised by replacements of pipe in the line?

A. Yes. However, the examinations that were made of the pipe, in connection with the knowledge that we were

able to obtain as to the date of installation, indicated that the pipe was in the condition that was given it.

Q. But in no instance have you varied except in respect to these lines where you took the 67 per cent condition arbitrarily—in no other instance have you varied from your application of three per cent per year, have you?

A. On the transmission lines?

Q. On the transmission lines.

A. No, sir.

• • • • • • •

Q. Now, in your study of this property, this line Pescadito to Jennings was built to serve Laredo, wasn't it?

• • • • • • •

A. Yes, sir.

Q. And was included in your 1932 appraisal, wasn't it?

A. Yes, sir.

Q. And was used to serve Laredo in 1932, wasn't it?

A. I believe that it was at one time.

Q. And was used to serve Laredo in 1933, wasn't it?

[fol. 539] A. From my personal knowledge, I don't know.

Q. You don't know. Well, it was in service when you inspected it in 1934, wasn't it?

A. Yes, sir.

Q. And flowing gas in the direction of Laredo, wasn't it?

A. Yes, sir; and leaking very badly.

Q. Now, a good section of that line was reconditioned in 1933, wasn't it?

A. Yes, sir.

• • • • • • •

Q. That is there are thirty mile posts, • • •.

A. Yes, sir; One is at the lower point, and Thirty is up at the top point. The reconditioning in the northerly end of the line started at, judging from the ditch, Mile Post 18, pole 7 plus 15 feet, and ended at Mile Post 21, pole 1 plus 165 feet.

• • • • • • •

Q. All right. Where was the other reconditioned section?

A. In the southerly end, starting at Mile post 10 pole 19, I believe, and ending at Mile Post 14 pole 27.

Q. That reconditioning was done in 1933, wasn't it?

A. I presume so.

Q. And the reconditioning job had been completed when [fol. 540] you went over it in February, 1934?

A. Yes, sir.

• • • • • • •

Q. Isn't it a fact, Mr. Elrod that when you went over the line in February, 1934, that from Mile Post 1 to Mile Post 15 you did not find existing in the line any leak clamps, or any leaks in the line, except the one to which you have referred; that is, at Pole 18, Mile Post 8, you have a notation of bad condition?

A. That is at Mile 8 and pole 14.

• • • • • • •

Q. What did that bad condition consist of?

A. Condition on 13 side of coupling, good; other side, bad.

Q. What do you mean "bad"?

A. Well, the pipe was badly pitted.

Q. Was it leaking?

A. I couldn't tell.

Q. Is that the only bad spot that your notes show between 1 and 15—between Mile Posts 1 and 15, when you made your inspection in 1934?

A. I think so.

• • • • • • •

Q. In your inspection in February, 1934, did you find any leak clamps or leaks in the line between Mile Post 15 and [fol. 541] Mile Post 16?

A. Yes, sir; there was a clamp at Mile Post 16 pole 27.

Q. All right; is that the only place?

A. Yes; between those.

Q. Now, how about Mile Post 16 and Mile Post 17?

A. There is a clamp and leak in two holes in Mile 16 between poles 2 and 3.

Q. How about between Mile Post 18 and Mile Post 22—this is in 1934?

A. A leak at Dresser coupling on Mile 16 between Poles 14 and 15.

Q. That is back in Mile Post 16?

A. Yes, sir, Mile 16. Mile 17, in a hot spot, five joints of pipe replaced.

Q. Has new pipe been put back in the line?

A. I don't know whether new pipe or not.

Q. Was it leaking in February, 1934?

A. No, sir. I believe that is all I have.

Q. How about in February, 1934, between 18 and 21—Mile Posts 18 and 21?

A. Between 18 and 21, there were no leaks. It was where the reconditioning began.

Q. Did you find leak clamps between 21 and 22 in 1934?

A. At Mile 21 pole 18 plus 15 feet, leak clamp.

[fol. 542] Q. How about between 22 and 23?

A. Mile 23 pole 5, leak clamp; pole 9, plus 100 feet, leak clamp; pole 16 plus 30 feet, leak clamp; pole 19 plus 100 feet, leak clamp; pole 21 plus 75 feet, leak clamp.

Q. Allright. How about from 24 to 27—mile post 24 to 27?

A. Nothing between 24 and 27.

* * * * * * *

Q. But I am talking about in those last four miles here, were not the major portion of the leak clamps that you found there?

A. There were a good many of them, yes, sir.

Q. Well, what percent of the total that you read out?

A. I haven't figured that out; I have not made a list of them.

Q. Now, did you investigate to determine whether these two reconditioning jobs were done in a workmanlike manner or not?

A. They seem to be.

* * * * * * *

Q. Now, do you use "working cash" to mean working capital?

A. Yes, sir.

Q. Do you subscribe to the proposition that the amount of working capital included in an engineering appraisal [fol. 543] of property of this sort should equal in amount

the amount of free capital used in a business and actually employed in the business by the managing officials?

A. I subscribe to the proposition that one-eighth of the total operating expenses, less gas purchases, as in the case of purchases made from an affilicated company or from themselves is sufficient as being a rather good allowance—I beg your pardon—provision.

Q. Do I take you answer to mean that you do not subscribe to the proposition I have outlined to you?

A. I do not subscribe to it.

Q. And do you subscribe to the proposition that the amount of working capital in an engineering appraisal of this sort should be the amount of free cash capital held in the business and used and employed in it by the managing officials and not available for investments and earning a return in other ventures?

* * * * * * *

A. Forty-five days of the operating expenses, in other words; I think that is enough.

Q. Now, do you take into account in computing cash working capital any minimum bank balances kept on hand by the Company?

[fol. 544] A. No, I think that is a matter that is purely arbitrary with them.

Q. Purely arbitrary, or purely discretionary?

A. Discretionary is better, yes. I thank you.

Q. And even if they, in their judgment, in the management of this property feel it necessary to keep on hand for the use of the property a minimum bank balance, then you don't think that it ought to be taken into account in computing working capital?

A. No, I think Consulting Engineers performing the duties that I have been called upon to perform here have to have some rule that is backed up by experience or what has been provided in other cases, to guide them, and take that as the guide.

Q. You mean some formula like this forty-five day operating——

A. Yes, I think that is rather generally used, and I think from a study of the situation that it is sufficient, and that is why I have used it.

Q. Well, now what study of the situation have you made?

A. Well, the Company has to pay its employes, I presume, and has to take care of the ordinary expenses from month to month, and the average expense for a year—or rather [fol. 545] for a month is a twelfth of that for the year, and if you will allow them a fifteen day leeway for such things as delayed payments, and so on, that that is sufficient —that is, the total operating expenses for the month, which is a twelfth of the year, plus fifteen days additional, seems to me, from the standpoint of engineering judgment should be enough; and that is the amount I have allowed, and that is the way I have gotten at it.

Q. Do you take into account prepaid items?

A. No, sir.

Q. Neither prepaid items nor minimum bank balances actually kept on hand by the Company?

A. No, sir.

. . . . . .

Q. Now, you have said, I believe, that you have had no experience in operating a property of this sort?

A. No, not of natural gas.

Q. And do you know of your own personal knowledge of any company of this character which keeps its cash paid out down to the point where it has got no more cash on hand after it meets its monthly payroll than an additional fifteen days of operating expenses?

. . . . . .

[fol. 546] A. No, I don't.

Q. You say you don't know of any such company?

A. I don't know of any such company.

Q. Well, as a matter of fact, do you know about the operating practices of gas utilities in that respect?

. . . . . .

A. I testified originally, I believe, that I had never had any experience with the operation of a gas company, and I haven't had any occasion to go into the operations of this company.

. . . . . .

Q. Now, did you include in Plaintiff's Exhibit 9 the Carolina-Tex. gathering system?

A. No, sir.

Q. And you didn't include the Jennings-Pescadito line?

A. No.

Q. Nor any gathering lines in the West Jennings field?

A. No, sir.

Q. Does Plaintiffs' Exhibit No. 9 purport to constitute an appraisal of the property used to serve Laredo?

A. Used and necessary to be used to serve Laredo.

Q. Used and necessary to serve, but it does not purport to constitute an appraisal of all the property used to serve [fol. 547] Laredo during 1933?

A. No.

Q. And if they did not have that gathering system over in the Carolina-Tex. field how would the gas get over to the transmission line? • • •

A. No, it could not get three unless the gathering system were there.

Q. And in the same way there is no way known to science by which gas could jump up from the Jennings field to Pescadito Junction?

A. No. I readily admit that the gathering lines are necessary.

• • • • • • •

Redirect examination.

Questions by Mr. Lange:

Q. In connection with the making of that appraisal you have inspected the properties?

A. Yes, sir.

Q. And further in connection with the making of that appraisal you also studied the history of the properties?

A. Yes, sir.

Q. And in compiling this appraisal of the properties did you have occasion to look into the future needs of the property as to the requirements for future depreciation?

[fol. 548] A. Yes, I had occasion to make a study of depreciation as connected with these particular properties prior to the Railroad Commission hearing and to study the accounting records in connection with depreciation and to arrive at a conclusion at that time, based on my engineering experience, as to what amount of depreciation would be

necessary for the future—that is, what annual allowance, or provision, rather, should be made for future depreciation.

Q. Have you arrived at an opinion, and what in your opinion is a proper and necessary allowance for future annual depreciation?

(Defendant objects on ground witness not qualified; objection overruled.)

* * * * * * *

A. My opinion at that time was that two per cent was adequate. I think that a maximum of three per cent, or rather an amount not in excess of three per cent should be provided.

Q. That is your opinion at this time?

A. Yes.

The Court: I want to know, three per cent of what?

A. Three per cent of the appraised costs of the properties.

The Court: As you appraised it or as somebody else appraised it?

A. As may be fixed or as was fixed by appraisal.

[fol. 549] The Court: Whose appraisal? I want you to say whether yours or Mr. Greene's or somebody else's.

A. The Railroad Commission, I believe, established a base and from that base we have taken away some of the properties that were included at that time and have made a new base or found a new value, and it is upon that new value that I would base my rate of return.

Mr. Coates: Reproduction cost new, or reproduction cost new less depreciation?

A. Cost new.

* * * * * * *

The Court: * * * Your maximum of three per cent that you would allow for depreciation is based on a figure found by you, I understand now?

A. Yes, sir.

The Court: Since the fair value of the property was fixed by the Railroad Commission in their hearing?

A. Yes, sir.

The Court: Now, where is the figure of fair value as found by you in the evidence?

* * * * * * *

A. The total cost new of the depreciable property. From that, of course, would have to be deducted land, which does [fol. 550] not depreciate, and rights of way, which do not depreciate, and materials and supplies and other such working cash.

* * * * * * *

A. If I may make a little further explanation——
The Court: All right.

(Defendant renews objection to qualification of witness.)

* * * * * * *

A. The object of depreciation, or provision for annual reserve to take care of depreciation, which is the loss of anything by a practical means, as rot, rust, and so on, is to maintain the integrity of the original investment. If the original investment is arrived at as being the figure that I have just quoted, less items that do not depreciate, then the per cent that is provided only bears upon that figure to provide a fund that will restore the items of property in that original figure, as they go out of existence, at their original cost.

* * * * * * *

The Court: Mr. Elrod, will you read into the record the figure you are talking about shown there in your exhibit on which you calculate the three per cent you are talking about? Read that exact figure.
[fol. 551] A. The exact figure is $891,616.00, less working cash, materials and supplies.
The Court: Well, state it exactly; I mean exactly the net figure.
A. I haven't the exact net figure. I can calculate it.

* * * * * * *

The Court: Now, Mr. Elrod, have you located that exact net figure you were asked for, and you said you would make the calculation on?
A. Yes, the net depreciation base is $829,559. It must be borne in mind, however, that there are corrections to be made in that, and that the three per cent maximum rate of depreciation must apply on any figure that is fixed by this Court or in this court.

* * * * * * *

Questions by Mr. Lange:

Q. In connection with the preparation of this appraisal and your study of the history of this company and its properties and its financial history, I will ask you whether you had occasion to look into the financial needs of this company in the past, and what in your opinion would be the financial needs of this company in the future as a fair rate of return on [fol. 552] its properties as you computed them in this appraisal?

(Defendant's objection to qualifications of witness renewed and overruled.)

* * * * * * *

A. I believe I testified in the Railroad Commission hearing——

The Court: Just testify here.

A. I believe that seven per cent on the value of the properties as found by me is an adequate return for the company.

Q. That is before the allowance for depreciation?

A. That is before, and does not include the allowance for depreciation,—the allowance for depreciation to be in addition to the seven per cent.

Q. And is, as you testified, in your opinion, three per cent?

A. Yes, or a total of three per cent.

Q. Or a maximum of three?

A. I think that is a high figure.

Q. Or a total of the two of ten per cent?

A. Yes.

Q. As a maximum figure?

A. Yes.

* * * * * * *

[fol. 553] Recross-examination.

Questions by Mr. Coates:

Q. Seven per cent of what, Mr. Elrod?

The Court: I believe he answered that a while ago. He said it was of the fair valuation as found by him.

Q. Well, what is the fair valuation found by you?

* * * * * * *

A. $690,261.00, which is the depreciated value of the properties as of December 31, 1933, as found by me.

Q. Now, can you compute the total requirements for depreciation reserve and return as estimated by you—the total annual requirements?

A. I haven't done so. I will.

• • • • • • •

Q. Mr. Elrod, in accordance with your testimony as to rates of return and reserve accrual, what would be, according to your testimony and in your opinion, the total annual requirements for reserve accruals and return?

A. On the bases that have just been quoted, without adjustments that have been asked for, it will amount to $73,205.00.

Q. And with the corrections that you have been asked to make it will amount to some more than that, will it not?

[fol. 554] A. Presumably.

Q. Well, presumably—you are going to add more value to that transmission line, aren't you?

A. Yes.

Q. And you are going to compute three per cent on that, aren't you?

A. I think so.

Q. Well, don't you know whether you will or not?

A. I am going to figure whatever those figures are.

• • • • • • •

Q. All right, sir. Mr. Elrod, yesterday you were asked the following questions, and didn't you give the following answer: "Q. Have you included going value in the appraisal of these properties, as shown by Plaintiff's Exhibit 9? Answer: No, sir". Was that your testimony yesterday?

A. Will you read me the question preceding that one?

Q. Yes. "Question: Do I understand you to testify that you had included going value in Plaintiff's Exhibit 9? Answer: I have not included it as a separate item. Question: Have you included going value in the appraisal of these properties, as shown by Plaintiff's Exhibit 9? Answer: No, sir."

[fol. 555] A. Well, I misunderstood your question, and what I intended to convey was that I had not included it as a separate item in that appraisal.

Q. Well, where is it? Point it out in Exhibit No. 9—what page does it appear on?

A. It does not appear on any page and does not appear except as an intangible thing, connected with and indistinguishable from the properties, and is the value in a utility that comes from the fact that the utility is established and is going and has business connected, as against a similar property that is not so advanced.

Q. How much is it?

A. I have not arrived at any figure for it.

Q. Do you know whether it is One Dollar?

A. No.

Q. Do you know whether it is Fifty Cents?

A. No.

Q. Well, do you know whether it is more than fifty cents?

A. No, I have not arrived at any value for it.

Q. Have you appraised it?

A. No, not except——

* * * * * * *

[fol. 556] Q. All right, Mr. Elrod; except what?

A. Except that I had appraised the property, as previously testified, as a going entity, with business attached, as against one not so advanced. In other words, if the property had had no business attached and no establishment effected, I would have appraised the property as junk.

Q. As junk? Well, how much would you have appraised them for, as junk?

A. I would have appraised them at the cost of the properties, less the cost of taking them up and salvaging them for whatever could be had for them.

Q. Well, have you in your mind any figure as to what that would be?

A. No.

Q. What the junk value is? I am trying to pin down and get the dollars of going value you have allowed.

A. I have not made any such estimate of dollars for the going value.

Q. Well, you say you can not find it in here on any page, and you can not state the number of dollars that it is?

A. That is correct.

Q. And yet you say it is in here, do you?

A. That is correct.

[fol. 557] Q. Well, how is one picking up this exhibit to know where it is, and how much it is?

A. From my statement that the properties were valued as a going concern; that is, as a going entity, with business attached.

* * * * * * *

Q. * * * Mr. Elrod, I am now directing your attention to this volume which has been marked for identification Plaintiff's Exhibit 9. You are familiar with it?

A. Yes.

Q. You made it?

A. Yes.

Q. In that volume, on page B you show what you had termed the direct construction costs of the transmission system property and the distribution system property, do you not?

A. Yes.

Q. Which is reflected—that is, these direct construction costs are reflected on page B of Plaintiff's Exhibit No. 9, by the total figure, cost new, of $897,471.00. Is that correct?

A. Yes.

Q. And by cost new less depreciation of $686,923.00?

A. Yes.

[fol. 558] Q. Now, that makes up the total of the direct structural costs which you have said include the costs of material and the costs of installation of this property, as shown by its inventory?

A. Yes.

Q. Now then, I asked you where, in any of these direct structural costs represented by the figures that I have pointed out, is any going value?

A. I don't believe I can answer that question directly, or direct your attention directly to where any such item is, without our understanding each other as to what going concern value is. My conception of going concern value is the value that attaches to a business as being established, and going, doing business with customers attached; the cost of that or the sacrifices made to produce that condition, such as the training of a personnel, the assembling of records and getting the people in a receptive mood to take the commodities of the utility——

(Interruption by defendant's counsel.)

* * * * * * *

A. And these items are proper charges to capital account. If they are not charged to capital account, they

[fol. 559] are charged, if they are charged at all, to operations. They are not charged to capital account, so far as I can find. If they have been charged to operations, they have been taken care of or it doesn't matter whether they have been taken care of or not.

Q. But I am talking about Plaintiff's Exhibit 9. Now, the direct construction costs are your engineering estimates of the cost of purchasing and installing and bringing into a completely constructed property, the inert physical elements of this property, are they not?

A. Yes.

Q. Now then, in those costs and in those dollar figures of $897,471.00 cost new, and $686,923.00 cost new less depreciation, is there any element of going value or does that constitute costs of material as estimated by you, and the costs of installation, as estimated by you?

A. Yes, and the difference between that and what the properties would be worth if they had no business attached and were not a going concern is perhaps the measure of going concern—that is, the junk value.

Q. Do you purport this to be an engineering estimate of costs or a legislative finding of value?—These direct construction costs here?

[fol. 560] A. They purport to be an estimate of costs.

Q. And that is an estimate of costs. Well then, where, in those estimates of cost, is any element for going value?

A. Just in just what I have said, in that they are valued as a going entity, and if they had not been valued as a going entity, they would have been valued as junk.

Q. Well, let's go over it again.

A. You will get the same answer.

* * * * * * *

Q. Do you subscribe to the proposition that going value is the added element of value inhering in a property, over and above the values of its component parts, by reason of the fact that it has its business attached, its operating personnel trained, its operating routines established and is in connected and coordinated operation?

A. Yes.

Q. And have you separately evaluated or evaluated at all any such element in this property?

A. No.

* * * * * * *

[fol. 561] The following are pages 1983-1986, both inclusive, from S. F. Vol. III.

[fol. 562] PLAINTIFFS' EXHIBIT No. 12

Supplement to Plaintiff's Exhibit No. 9

Allocation

Assuming that all gas delivered to Laredo Section originates in Carolina-Texas Field, the following distribution is made:

	M. C. F.	%
Aguilares	630	.14
Oilton	2,612	.56
Mirando	12,037	2.59
Misc.	2,297	.49
Laredo City, inside—	317,071	68.18
Laredo City, outside—	130,434	28.05
Total M. C. F.	465,081	100.00%

Ratio of volume of gas delivered at Aguilares Junction for inside Laredo City is	68.18%
Ratio of volume of gas delivered at Laredo City Gate for inside and outside is (317,071 M. C. F./465,081 less 17,576 M. C. F.)	70.85%
Appraised value, new, of Transmission property from Carolina-Texas field to Aguilares Junction	$92,127
Appraised value, new, of Transmission property from Aguilares Junction to Laredo City Gate	$267,001
Total Transmission Properties	$359,128

Proportion of Transmission Properties Allocable to Laredo:—

Carolina-Texas, Aguilares Jc. Section	$92,127x68.18%	—$62,812
Aguilares-Laredo	267,001x70.85%	— 189,170
	359,128x70.16%	—$251,982

Weighted average percent for allocation of Transmission Properties.. 70.16%

	Total Appraised Value New		Allocated to Laredo
Transmission Properties	$359,128x70.16%		$251,982
Distribution Properties	602,258		575,616
Totals	$961,386	86.08%	$827,598

Weighted average per cent. for allocation, 86.08.

[fol. 563] General Summary and Allocation

	Cost New	% Condition	Cost, New Less Depr.
Transmission System	$357,707		$261,919
Distribution System	601,338		473,339
Totals	959,045		735,258
Less:—			
Land, Leases & Rights-of-way	10,475		10,475
Balances	948,570		724,783
Materials & Supplies	19,744		19,744
Balances	928,826	75.91	705,039

Plaintiffs' Exhibit No. 12—General Summary and Allocation—Continued

	New Cost	Condition %	Less Depr. Cost, New
Included with and incorporated in this amount, as "Expense of Purchase & Storage," and deducted as being excessive	28,741	75.91	21,795
Balances	900,115		683,244
Add back for Land, Leases & R. O. W.	10,475		10,475
Add for Reasonable Purchase & Storage	7,500	75.91	5,693
Totals	918,090		699,412
Less Items Already Allocated:			
Furniture & Fixtures	10,310		7,320
Auto & Equipment	5,807		1,724
Tools & Equipment	2,321		1,741
	18,438		10,785
Balance for allocation	899,652		688,627
Allocated to Laredo, 86.08%	774,420		592,770
All Items Already Allocated	18,438		10,785
Total Allocated to Laredo	792,858		603,555
Preliminary & Organization, 2%	15,857		15,857
Engineering and Supervision, 2½%	19,821		15,046
Administration & Legal, 1½%	11,893		9,028
Taxes During Construction, ½%	3,964		3,964
Interest During Construction, 3½%	27,750		21,065
[fol. 564]			
Materials & Supplies	$19,744		$19,744
Working Cash, 45 days of Annual Operation Expense less Gas Purchases	9,788		9,788
Totals	$901,675		$698,047
Total value, Depreciated			$698,047

[fol. 565]

	Cost of Reproduction	
	New	Less Depr.
Summary:		
Transmission System of South Texas Gas Company	$357,707	$261,919
Distribution System of Texas Border Gas Company	601,338	473,339
Total	$959,045	$735,258

[fol. 566] Re-cross-examination.

Questions by Mr. Coates:

Q. Now, so that I may clearly understand you and so that the record may reflect your methods, is it not true that you treat lands, leases, and rights-of-way, materials and supplies, preliminary and organization expense, and cash working capital—or working cash, as you term it, as non-depreciable items?

A. Yes, it is true.

Q. And as not to be taken into account in the base for computing the annual reserve for depreciation, retirements, and replacements?

A. Yes.

[fol. 567] ALBERT MARTIN, a witness for plaintiffs, having been duly sworn, testified as follows:

Direct examination.

Questions by Mr. Bobbitt:

Q. What is your name?

A. Albert Martin.

Q. Where do you live, Mr. Martin?

A. In Laredo.

Q. How long have you lived in Laredo?

A. I have lived in Laredo all my life—forty-four years, except two years spent in the United States Army, one of which I spent in France.

Q. Have you lived continuously in Laredo, with that exception?

A. With that exception, yes, sir.

Q. All your life. What position do you hold—what official position in the City of Laredo?

A. Mayor.

Q. You are mayor of the town?

A. Mayor of the city, yes, sir.

Q. How long have you been mayor of the City of Laredo?

A. Eight years.

[fol. 568] Q. Eight years. Did you serve in any other official capacity with the city prior to the time you became mayor?

A. Yes, sir.

Q. What was it?

A. Alderman.

Q. How long did you serve as alderman?

A. Six years.

* * * * * * *

Q. On another matter it has been testified in this case by Mr. Stein, the District Manager of the United Gas Public Service Company at Laredo, that reducing the price of gas

from 75 cents per thousand cubic feet to 55 cents per thousand cubic feet, as provided in the Commission's order, would not bring to the Company any increased number of customers, or any increased volume of gas sales to existing customers in the City of Laredo. You live in the City of Laredo, and are a consumer of gas, are you not?

A. Yes, sir.

Q. Would the reduction of the price cause you to use any more gas than you use at the 75-cent rate?

A. Certainly it would.

[fol. 569] Q. Are you acquainted generally with the users of gas for residential purposes in your city?

A. I am.

Q. I believe the population of the city according to the last census is approximately 35,000; is that correct?

A. Yes, sir.

Q. That is about right?

A. Yes, sir.

Q. The testimony in this record shows that there are approximately five thousand gas users in the City of Laredo. Being acquainted with the situation in the city, as you are acquainted with it, would there, in your opinion, be an increased number of gas consumers—I mean, residential consumers in number, and an increased amount of gas used by existing customers, if the price is 55 cents, instead of 75 cents?

(Defendant's objection overruled)

* * * * * * *

A. They would gain more customers, and the present customers would burn more gas.

* * * * * * *

Q. How much increase do you think there would be?

A. There would be an increase of aproximately fifteen hundred meters.

[fol. 570] Q. In your opinion there would be an increase of approximately fifteen hundred meters?

A. Yes, sir.

Q. What do you base that opinion on?

A. I think I am pretty familiar with the conditions existing in Laredo. I further know that there is a fleet of ap-

proximately one hundred trucks operating out of Laredo, going as far north as my ranch. I own a ranch fifty-five miles north of Laredo on the paved highway, and ten miles east of a dirt road, and there is approximately fifteen trucks going out there—have been going out there for the last six months, two men to the truck, to haul wood, for which they pay me seventy-five cents a load; they go out 66 miles and return 66 miles, cut that wood, and put it on the truck and bring it back to town, and they have all told me that they make a nice profit on that load of wood.

(Defendant's motion to strike overruled.)

Q. What did you state they had told you?
A. That they had made a profit.
Q. Those hundred trucks that haul wood in there, they distribute that wood to people desiring to have fuel in their homes in Laredo, don't they?
A. Yes, sir.

[fol. 571] Q. Would these users of wood, in your opinion, use natural gas if they could get it at the 55-cent rate, rather than the 75-cent rate?
A. In my opinion, they would.

(Defendant renews objection to entire line of testimony.)

• • • • • • •

Q. Now, Mayor Martin, testimony in this record by the witnesses for the Gas Company shows that the primary reason, as I gathered it from that testimony, for the non-use of gas by a great many people in the City of Laredo was the fact that the installation for the use of gas was the trouble, and not the price of gas. Are you familiar with the character of installation that many of the gas users, or would-be users of gas, install for the use of gas in their homes?
A. I think I am.
Q. Approximately what would be the expense?
A. Six to eight dollars.

• • • • • • •

Q. I mean what material would that include?
A. It would include an extension from the curb to the property line and a connection for stove and light.

Q. Do you know whether, of your own knowledge, there [fol. 572] are a large number of users of gas there with just such an installation as you testify to—a very simple and inexpensive installation?

A. Yes, sir.

Q. There are a great many laboring people living in the City of Laredo?

A. Yes, sir.

Q. People of small means?

A. Yes, sir. We have three thousand registered with the Relief Board.

Q. People that rent their homes?

A. Yes, sir.

* * * * * * * *

Cross-examination.

Questions by Mr. Coates:

* * * * * * *

Q. Now, as I understand your position, Mayor Martin—just so we can understand each other—what you are attempting to get here as the Mayor of the City is lower gas bills for your consumers in the City of Laredo, is it not?

A. Yes, sir.

Q. And that was the idea you had in mind at the time the rate reduction ordinance was passed, wasn't it?

* * * * * * *

[fol. 573] A. Yes, sir.

Q. And that was the result that you thought the rate reduction ordinance would have?

A. Yes, sir.

* * * * * * *

Q. * * * It has been your intention, and you have stated on a number of occasions, haven't you, that by putting that rate into effect, why, that would give the residential consumers there in Laredo approximately twenty per cent reduction in their gas bills?

A. Yes, sir.

Q. And that is the effect you think the putting into effect of this rate will have?

A. Yes, sir.

* * * * * * *

Q. And you have stated on numerous occasions, have you not, that if the rate is put into effect that it will mean consumers will get a refund of approximately twenty per cent of the amount of the bills that they have paid since January 1, 1932?

A. I have stated that because of the fact that is what the order of the Commission carries, the difference between the 55-cent rate and whatever rate we have been paying.

* * * * * * *

[fol. 574] Q. That is your opinion, is it not, and you have so stated on numerous occasions, that this 55-cent rate if put into effect would reduce the average bills of residential consumers there in Laredo about twenty per cent over what they were paying under the 75 cent rate?

A. Yes, sir.

Q. And that is the amount of reduction that you as a houseowner there in Laredo would expect to get in your average bill under the 55-cent rate, is it not?

A. Yes, sir.

* * * * * * *

Q. Do you know approximately how many houses there are in Laredo having three rooms or better that are not equipped with gas?

A. No; I couldn't say.

Q. Do you know how many having four rooms or better that are not equipped for using gas?

A. I couldn't say.

Q. This twelve or fifteen hundred customers, from among what class of people would you expect those customers to come, Mayor Martin?

A. Well, from all classes of people—good laboring class or people getting all the way from one to three dollars a day.

[fol. 575] Q. Do you know anybody getting as much as three dollars a day that does not use gas in his house?

A. I have not made a particular study of it. I don't know definitely.

Q. Do you know anybody that is getting as much as two and a half a day that does not use gas down there?

A. I have not gone into that particular feature of it.

Q. Do you know whether this twelve or fifteen hundred customers, what part of them are located on the same streets the Company has lines on?

A. No; I couldn't say that either.

Q. Do you know what part of them the Company would have to extend its mains to in order to reach?

A. I do know, Mr. Coates, if you had a map of the City of Laredo, what it would cover. If you are familiar with the City, most of the population in the City of Laredo lies between, north of the Texas-Mex. tracks, if you know where they are?

A. Yes.

A. —and west of what we call the Arroyo Zacate. In a number of instances in there there are twenty-five or thirty houses to the block; and it covers probably from the Arroyo Zacate to Santa Maria Avenue, and from Bruni Street to the Tex-Mex. tracks.

[fol. 576] Q. What size blocks are those?

A. About 330 feet.

Q. What size house are they?

A. Well, the majority of them, I guess, are three to five-room houses.

Q. Each occupied by a single family?

A. Yes, sir.

Q. And is that section largely populated by people of Mexican extraction?

A. Yes, sir.

Q. And it is in that area where you think these twelve to fifteen hundred customers could be picked up largely?

A. The majority of them.

Q. Can you state about what per cent of the twelve to fifteen hundred would be picked up there?

A. Around 700.

Q. In your judgment?

A. Yes.

Q. And what about the remainder of them?

A. The remainder would have to go over there east of the Creek, and what is known as the Colone Hidalgo.

Q. And what size are the blocks over there?

A. About the same.

[fol. 577] Q. Just about the same character of residential section as the one you have just previously described?

A. No; it is probably a little better construction.

Q. A little better construction?

A. Yes, sir.

* * * * * * *

Q. But you think of the twelve to fifteen hundred customers, by far, or practically all of them would be picked up in those two areas?

A. The majority of them, yes.

Q. And is there any other area of like kind that you have in mind?

A. Naturally, I have it distributed all over the town, Mr. Coates.

Q. But these are the two principal areas?

A. Yes, sir.

Q. And are there residential sections such as these in other parts of the town where you think the balance of the twelve to fifteen hundred would be picked up?

A. Yes; I think they would be picked up down in an area south of Iturbide Street to the River, and west of Santa Eduardo Avenue.

* * * * * * *

[fol. 578] Q. Then the installation for cooking which you would expect from these additional consumers would be a hot plate, would it?

A. Yes.

Q. And you would likewise expect them to install one or two lights for using gas for lighting?

A. Yes.

Q. And likewise expect them to put in a space heater?

A. Yes.

Q. And about what type or size of space heater?

A. Oh, a small one, $3.50 to $4.50 worth.

Q. A $3.50 to $4.50 space heater?

A. Yes.

Q. And about what would that hot plate cost; do you know?

A. About the same approximately.

Q. And so for an investment of six to eight dollars in yard service lines, and say seven to nine dollars in hot plate, space heater and light jet, you think they would become consumers of gas?

A. A total investment of how much?

Q. Six to eight dollars in yard service line, an average of four dollars for the hot plate and four dollars for the space heater and one dollar for the two light jets; why they [fol. 579] would then be equipped to use gas?

A. Yes. I know of a lot of them that had it, Mr. Coates, and discontinued it.

Q. And they discontinued about that character of use, did they?

A. Yes.

* * * * * * *

(Plaintiffs rest.)

[fol. 580] Defendant's Surrebuttal Testimony

[fol. 581] J. V. Strange, a witness for Defendant, having been duly sworn, testified as follows:

Direct examination.

Questions by Mr. Coates:

* * * * * * *

A. I am Vice-President of the United Gas Public Service Company, in charge of distribution activities.

* * * * * * *

Q. Are there under you as Vice-President in charge of distribution the distribution operations in the city of Laredo, Texas, Mr. Strange?

A. Yes, sir.

* * * * * * *

Q. What do you style yourself as in the public utility business?

A. As an operating man.

Q. Mr. Strange, throughout your experience in the public utility business have you made a study as a practical operating man as to the ways of increasing the consumption of public utility service which the companies that you were then serving were engaged in selling?

A. I think I have.

Q. And have you given a great deal of study to rate structures which will promote the additional use of public utility [fol. 582] service, both in the field of electric service and in the gas service, both manufactured and natural gas?

A. I think I have.

Q. Well, now, Mr. Strange, have you found in your twenty-eight years of experience that there is a point at which the reduction of rates will not produce any substantial increase in consumption of the service and below which the reduction of rates simply means that much loss in gross revenues?

A. Yes, sir.

Q. Do you feel that the economic point or level to which you have just referred has been reached in Laredo with the rates sometimes referred to as the seventy-five cent rate, which is the rate of seventy-five cents per thousand cubic feet, ten per cent discount for prompt payment of bills, one dollar per month minimum bill?

A. Yes, I think that point has been reached in Laredo.

Q. Why?

Mr. Bobbitt: * * * Could we ask him a few questions on qualifications before you proceed?

Mr. Coates: Why, yes.

[fol. 583] Questions by Mr. Fitzhugh:

Q. Mr. Strange, where have you ever made a study of the effect produced by rate reduction on either customer consumption or the number of customers?

A. I have made such an investigation, as far as it was possible to make such an investigation, here in Texas.

Q. What town was that in?

A. Amarillo.

Q. Are the conditions in Amarillo anything comparable to the conditions in Laredo as an operating problem?

A. I think they are comparable to this extent: that the rates were reduced there even more in percentage than the reduction we are discussing here in the case of Laredo.

Q. You are familiar with the general territory around Amarillo?

A. Fairly so.

• • • • • • •

Q. Well, you know as an operating problem, don't you, Mr. Strange, that there are no competitive fuels with gas for heating in Amarillo?

A. No, I don't. I am not sufficiently familiar with what other forms of fuel might be available there.

[fol. 584] Q. You know, too, do you not, Mr. Strange, that the conditions of climate that prevail in Amarillo make a very high customer consumpation as compared with Laredo?

A. Of course, I realize that more gas would be required in Amarillo than in Laredo.

Q. Where you have about a three or four months' winter season at Laredo, you have about a six to nine months' gas season—winter season at Amarillo, do you not?

A. Yes, but I don't see that that would make any difference in reducing the rates leads to increased consumption. It seems to me that it should be true in the case of Amarillo, as it is contended it would be true in the case of Laredo.

Q. Well, are you willing to have this Court and jury think, Mr. Strange, that a study of any effects produced by a rate reduction in Amarillo would be comparable with a like reduction in the town of Laredo?

A. Yes, sir; I think it is very comparable.

Q. What other towns have you investigated?

A. I have investigated on our own system other towns fairly comparable to Laredo where the rates are higher, and at higher rates the consumption is even greater than it is in Laredo, which has convinced me that within a ra-ge of, say, fifty cents a thousand to a dollar a thousand natural [fol. 585] gas still is so cheap that those who can afford to use it at any reasonable price would do so.

Q. What other towns are you referring to now?

A. I am referring particularly to Robstown and Sinton, which are in approximately the same latitude as Laredo and seem to be the most comparable towns in which our company operates.

Q. What is the population of those two towns?

• • • • • • •

A. I think in the two towns the population is between eight and ten thousand people.

Q. You mean the two together?

• • • • • • •

A. About four thousand in Sinton and about six thousand in Robstown.

Q. Now, at Sinton, Mr. Strange, what are the conditions as to competitive fuel?

A. I think they are approximately the same as in Laredo.

Q. Are there available anywhere near Sinton supplies for wood?

A. I think just practically the same as would be found at Laredo.

[fol. 586] Q. Is that true of Robstown also?

A. Yes, sir.

Q. Now, Mr. Strange, doubtless you recorded all the results of your study of both the towns of Robstown and Sinton, as well as that of Amarillo,—is that true?

• • • • • • •

A. I have records as to the sales of gas to residential customers in each of these towns—Laredo, Sinton, and Robstown, and——

Q. Do you have the same for Amarillo?

A. And the average rate paid by residential customers in each of the towns.

Q. What other towns have you studied besides those three?

A. I think that is about all that I have studied recently.

Q. Now, outside of Amarillo, Mr. Strange, you have not studied any town at all where there has been a rate reduction, have you.

A. I thought Amarillo was the very best example that could be taken, because the reduction there was comparable to the reduction contemplated here, and was made in recent years.

Q. Now, answer my question, please, sir.

• • • • • • •

[fol. 587] A. I have not, because I don't know of any other town where a rate reduction has been made in Texas.

(Plaintiffs object to qualifications of witness, objection overruled.)

Direct examination resumed.

Questions by Mr. Coates:

Q. Mr. Strange, in making your duties in connection with Amarillo, have you informed yourself and taken into account the difference in the climatic conditions which prevail in Amarillo, Texas, which is in the northernmost part of the State, as compared with the climatic conditions in Laredo, which is one of the most southerly towns in the State?

A. I have.

Q. And have you informed yourself with respect to the degrees of cold or what you term in the gas business the temperature at which the householder will normally use gas for house heating, in respect to Amarillo and in respect to Laredo?

A. I have.

* * * * * * *

Q. Now, Mr. Strange, based on your studies which you have outlined, both in respect to Amarillo and in respect [fol. 588] to Sinton and Robstown, where, as I understand you, both higher rates and higher consumption than in Laredo prevail,—what, in your judgment, would be the effect, in respect to increased consumption by existing consumers, of reducing the residential rate from 67½ cents, net, to 55 cents, net?

A. I think such a reduction would simply mean that the customers would make the saving represented by the difference, and that the company would suffer the loss in its revenues, and that no appreciable amount of increased gas consumption would ensue, nor would additional customers come on the line by reason of this reduction.

(Plaintiffs extend previous objection to the entire line of testimony.)

Q. Do you know when the residential rate was reduced in Amarillo?

A. It became effective in April, 1931.

* * * * * * *

Q. And do you know what the percentage reduction in rate was in 1931?

A. As I have said, the rates were reduced in 1931. Taking the average price paid per M. C. F. by all domestic customers in 1930, the first full year before the reduction [fol. 589] became effective, and taking the same figure for the year 1932, the first full year after the rate reduction became effective, it shows that the rates were reduced 24.52 per cent.

Q. Now, do you know the percentage loss in revenues brought about by this 24.52 per cent reduction in the domestic rate, as reflected by a comparison between the first full year or the last full year in which the higher rate was in effect, and the first full year in which the reduced rate was in effect?

A. There was a reduction—a corresponding reduction in revenues of 23.34 per cent.

Q. Mr. Strange, you heard Mayor Martin's testimony as to the twelve or fifteen hundred additional customers that he would expect the company to add at the 55 cent rate?

A. Yes, sir.

Q. And you likewise heard his testimony with respect to the character of use which he, knowing these people, would expect them to make of the gas?

A. Yes, sir.

Q. Based on your experience, Mr. Strange, and your knowledge of average residential consumptions in Laredo, what annual consumption of gas would you expect an [fol. 590] installation of this class to show on an annual basis—that is, an installation or a small house equipped with a gas hot plate and a four dollar space heater, and one to two gas lights, as compared with the average residential consumption in Laredo?

A. I think such a customer would consume on an average approximately forty per cent of as much gas as is now being consumed by the present average residential customer in Laredo.

Q. Now, have you made any computation to show the saving to such a consumer at the rate of 55 cents, net, ten per cent penalty for non-payment within ten days, and a dollar minimum bill, as compared with the 75 cent rate, ten per cent discount and dollar minimum bill?

* * * * * * *

A. Residential consumption. Our average residential consumption for 1933 from our present customers in Laredo was 37,000 cubic feet.

Q. Exactly or approximately?

A. Approximately 37,000 cubic feet.

• • • • • • •

Q. And that is the annual average?

A. That is the annual average—that is the average consumption for '33—1933. I think it would be liberal to pre- [fol. 591] dict that a customer of this type would use as much as 15,000 cubic feet per annum, because obviously during the month when heating—room heating is not required, using just a plate and a little gas jet, not more than 1,000 cubic — of gas would be used. Our present average consumption in the summer months in Laredo falls below 2,000 cubic feet from those customers, many of whom are using gas for purposes that could not be used by this type of customers. Now, assuming that this type of customer would use 1,000 feet of gas for nine months in the year, and then would use 2,000 cubic feet in the remaining three months of the year.

Q. That is, the heating season?

A. In the heating season, thus accounting for the annual consumption of 15,000 cubic feet, and computing those monthly consumptions at the rate of 55 cents, net, with a dollar minimum, and the present 67½ cent rate, net, with a dollar minimum, we find that the saving as against the two rates would amount to seventy-five cents in twelve months, or approximately six cents a month. I am certain that those customers who can not afford to use gas now [fol. 592] would not be induced to put it in because of a saving of six cents per month.

• • • • • • •

Q. Now, Mr. Strange, I believe the term which is sometimes used in respect to computations of rates—just a minimum monthly bill—that is, the revenues to be derived at those rates, is to state the point at which the rates cross—isn't that the term used?

A. Yes, sir.

Q. And what do you mean by the term "the point at which the rates cross"?

Q. There is a point where the 55 cent, net, rate would result in a lower rate, depending upon the consumption, than the present 67½ cent rate. That point of consumption is approximately 1500 cubic feet—I believe, to be exact, 1480 cubic feet; so that any customer using less than 1480 cubic feet per month would not be benefit-ed by the 55 cent, net, rate.

Q. Why not?

A. Because the minimum of one dollar would result in the same charge as the present rate.

Q. Under each rate?

A. Under each rate.

• • • • • • •

[fol. 593] Cross-examination.

Questions by Mr. Bobbitt:

Q. If I understand your conclusion and opinion about these users of small amounts of gas, you have just testified about, they are not profitable or desired customers by the gas company?

A. I think customers of that type would be a burden on the present customers.

Q. I say they are not desired by the company.

A. We desire all customers, but because of the investment that would be required to serve them, the increased operating expenses that would be incurred, and the very small revenue that would be obtained, it would be a burden on the present customers.

Q. And, as I say, that group of customers, then, are not desired by the gas company?

A. For the reasons I have stated, yes.

• • • • • • •

Q. You have never tried a reduction of rates, have you, as to whether or not it would bring increased consumption or increased number of customers?

A. I think we have made reductions and have studied the effect of them.

[fol. 594] Q. I say have you tried the reduction of rates in Laredo, or Robstown, or Sinton, where you testified about?

A. No, because I——

Q. I didn't ask you why. You haven't tried any rate reductions, have you?

A. No, sir.

Q. And you don't serve Amarillo, do you?

A. No, sir.

Q. You don't know anything about the situation at Amarillo, except your investigations and what you say other folks have told you about the conditions there; in other words, you don't operate there, and you have never had any experience in the City of Amarillo in the gas business.

A. I haven't operated in * * * Amarillo.

Q. How many cities does your concern serve in Texas, Mr. Strange?

A. We serve 115 towns and cities in the State of Texas.

Q. Yes, sir. You have never tried a rate reduction in any of those cities, as to whether it would bring increased revenues through increased volume of sales or increased number of customers?

A. No, because our gas rates are already very low, Mr. Bobbitt.

[fol. 595] Q. Yes, sir. I didn't ask you why—whether they are high or low; that is a matter of opinion, of course.

A. I thought you would like to have the reason.

Q. I will ask you, Mr. Strange, thank you, if I desire the reason. Well, now, you have never tried reducing the rates in the City of Laredo for industrial purposes, as to whether that would bring increased customers or increased consumption, have you?

A. Yes, sir.

Q. When?

A. Well, notably in the case of the American Service Company—the ice company.

Q. You reduced that to seventeen cents, didn't you?

A. As soon as their contract expired the rate was reduced materially, and the consumption did not increase as the result of that fact.

Q. That reduction came, of course, during a period, as has been testified here, during a period of depression, didn't it—general depression?

A. During the last two years.

* * * * * * *

Q. And you pay for the gas in the field, four or five cents, whatever it may be, and you transport that gas through these

[fol. 596] mains and these facilities that are established and must be maintained, as I understand, to meet your residential and other requirements in the city of Laredo. That is true, is it not?

A. We have to maintain our facilities to supply our customers in Laredo, yes.

Q. And the facilities through which you are transporting gas and serving your customers in the City of Laredo, are of much larger capacity than necessary for the present purposes?

A. I don't know that that is true.

Q. Well, don't you know that you could carry a larger or transport a much larger volume of gas through the existing facilities from the Carolina-Texas field to the City of Laredo than you are now carrying?

A. * * * I don't know that, Mr. Bobbitt.

Q. You don't know?

* * * * * * *

A. That is an operating problem of the transmission and pipe line system and with which I am not connected in an operating capacity at all.

Q. Just what are you connected with?

A. With the distribution system.

* * * * * * *

[fol. 597] A. The average price paid by residential customers in Laredo during 1933, for all gas requirements, was $26.69.

Q. For residential purposes?

A. Yes.

The Court: Is that per year?

A. Yes, during the year 1933.

Q. What was it during 1932?

A. I haven't the figures for 1932, Mr. Bobbitt; but it was approximately the same.

Q. * * * what are your duties with the company?

A. I have supervision over all the operations of our distribution properties.

Q. You have nothing to do with the transmission?

A. No, sir.

Q. What do you mean by supervision over those distribution properties in Laredo?

A. Well, I and my assistants have general supervision of all of the activities of our various distribution organizations in the operating work.

Q. They work under your direction?

A. Yes.

* * * * * * *

[fol. 598] Q. What affiliated companies do you serve, along with the United Gas Public Service Company?

A. Well, there are some subsidiary companies of the United Gas Public Service Company.

Q. What are they, the ones that you serve as vice president, or in any other capacity?

A. The ones with which we have distribution operations are the Northern Texas Utilities Company, the Houston Gulf Gas Company, the Southern Gas Utilities Company, and the Houston Gas & Fuel Company, which is an indirect subsidiary. I believe I have named all of them.

Q. Any of them operating down in the Laredo district?

A. I believe not.

* * * * * * *

Q. You serve all those companies?

A. They are all connected, as part of the United Gas System.

Q. Are you an officer in the United Gas System?

A. The United Gas System as such is just a name, Mr. Bobbitt. There are no officers of that, as the United Gas System.

Q. It is not a corporation?

A. No, sir.

Q. What is it?

A. It is just a name that is given to the group of companies.

* * * * * * *

[fol. 599] A. D. GREENE, recalled.

Questions by Mr. Coates:

Q. Now, Mr. Greene, in your judgment, as an engineer, taking into account the peak demands for gas to be ex-

pected in the City of Laredo, is there what you term an excessive capacity in transmission lines leading into Laredo at this time, likewise taking into account the gas pressures, as you understand them, in the fields?

A. Of course, the capacity of the line is limited by the pressure existing at the wells and by the pressure at which it is necessary to deliver the gas to the city gate, as well as the length and size of the line; and considering the pressures which are available in Carolina-Tex. the capacity is very little in excess of the actual requirements.

Q. And is it sufficiently in excess so that if you were re-designing this system at this time you would cut down on the size and capacity of that line?

A. No, sir; if we were re-designing the system at this time we would have at least as much capacity as exists in the system at present.

Q. In designing these transmission lines do you try to cut down the size of the pipe, so as to be just sufficient [fol. 600] or no more than sufficient to take care of the then peak hour—peak day demands of your market?

A. No, sir, it is considered good engineering practice to design for slightly in excess—somewhat in excess of the present demand.

* * * * * * * *

[fol. 601] JOHN S. IVY, a witness for Defendant, having been duly sworn, testified as follows:

Direct examination.

Questions by Mr. Coates:

Q. Please state your name and by whom you are now employed.

A. My name is John S. Ivy, and I am employed by the United Gas Publ' Service Company.

Q. In what capacity?

A. Chief Geologist.

Q. How long have you been employed by this company and its predecessor companies?

A. Eleven years.

* * * * * * *

Q. And since 1923 in what character of geological work have you been largely engaged?

A. I have been in charge of all of our exploration work, involving the drilling and development for natural gas as well as oil.

Q. Have you been engaged in the computation and estimation of gas reserves?

A. Yes, sir, during the time of my employment with the company.

Q. Covering what States?

[fol. 602] A. Louisiana, Arkansas, Mississippi, Texas, New Mexico, Montana and Pennsylvania.

Q. State whether or not any gas pipe lines have been built for which you estimated the gas reserves to take through those pipe lines.

A. A pipe line extending from the Monroe field, in Ouachita Parish, Louisiana, to Baton Rouge, Louisiana, now operated by the Interstate Natural Gas Company; a pipe line extending from the Monroe gas field to St. Louis and Alton, Illinois; the pipe line that extends from Tioga field in Northern Pennsylvania to the vicinity of Williamsport, Pennsylvania; a pipe line from Cut Bank field in Montana to Butte and Anaconda, and an additional line in Southern Montana from the Bear Creek field to Bozeman and Livingston; a pipe line from Cotton Valley to Shongaloo.

Q. Is that in Louisiana?

A. Yes, sir, and from the Springhill field located in Webster Parish, Louisiana, to the city of Shreveport. Also, I have estimated the reserves behind various and sundry extensions of our system as it now exists.

Q. With reference to those pipe lines that you have enumerated, and in order to give some idea of the extent of the work, can you state approximately the expenditures involved in those lines?

[fol. 603] A. I don't know their exact cost, but offhand I think that it would be in excess of fifty million dollars.

Q. As Chief Geologist of the United Gas Public Service Company, what are your principal duties, Mr. Ivy?

A. My principal responsibility is to supervise the Geological Department, to see that adequate reserves are maintained behind our markets.

Q. And is there any rule that this company follows with respect to the amount of gas reserve definitely under con-

tract or owned which it has behind the supply of gas to its markets?

A. Yes. We feel that the gas reserve behind any specific market should never be allowed to get below ten times the annual demand.

Q. And is it part of your job to see that that situation exists with respect to all of the markets served by United Gas Public Service Company and affiliated companies?

A. Yes, sir.

Q. And is it a part of your duties to keep constantly up to date with respect to the gas reserves available in the territory served by United Gas Public Service Company and affiliated companies?

[fol. 604] A. Yes, sir.

Q. Are you acquainted with the gas fields available to the Laredo market, Mr. Ivy?

A. Yes, sir.

Q. What are those fields?

A. The Carolina-Tex. field, the Jennings field, the Martinez field, the Cole-Bruni field.

* * * * * * *

Q. Please state the results of your estimate of the gas reserves in the Carolina-Tex. field remaining and susceptible of economic recovery.

A. I estimate that there is now approximately three billion feet remaining that can be counted upon to be recovered.

Q. Does that estimate cover the entire field, or simply that portion of the field under purchase contracts or where leases are owned by United Gas Public Service Company or affiliated companies?

A. That covers the entire Caroline-Tex. field, and includes the Rosenberg area, which is located immediately west of the field.

* * * * * * *

Q. Mr. Ivy, do you know at what approximate pressures past experience has shown that wells in the Carolina-Tex. field go dead, if they do go dead?

[fol. 605] A. Yes, sir. In the Mirando sand, often referred to as the two thousand foot sand, wells that have gone dead have gone dead at an average pressure of 310

pounds. There has been a total of twenty wells completed in that horizon, of which have been either abandoned or are dead at this date and only four producing.

Q. Now, by "go dead" what do you mean?

A. They fail, due to the lack of volume or due to the fact that they fill up with water.

Q. Due to water coming into the well and the line instead of gas?

A. Yes, sir.

Q. Proceed with your explanation.

A. In the twenty-two hundred foot sand the wells have gone dead at an average 280 pounds pressure. There are now five wells producing on the pipe line and one well that is not connected to any line; two wells in this horizon have gone dead. In the twenty-six hundred foot sand the wells have gone dead at an average pressure of 192.5 pounds; there are four now producing gas and five have gone dead. The three thousand foot sand is entirely depleted; the wells that produced gas from that horizon are all dead at this time.

[fol. 606] Q. Now, Mr. Ivy, assuming that gas is withdrawn from the Carolina-Tex. field in 1934 and subsequent years at the same rate at which it has been withdrawn in 1933, approximately how long will the field continue to supply gas to the Houston Pipe Line Company and United Gas Public Service Company and its affiliated companies?

A. Well, the reserves are approximately three billion feet. The production for the year 1933 was 1,159,000,000, so that it would indicate that there is about three years life on the basis of the withdrawals.

Q. Do you expect all of those wells to go dead at the same time?

A. No, sir.

Q. With respect to the existing pressures in those wells in their relationship to the pressures at which wells have been found to go dead, are the existing pressures substantially above, you may say the average pressures at which such wells have been found to go dead?

A. Only in the case of the twenty-two hundred foot sand and the Rosenberg sand.

Q. What are the wells producing in the Rosenberg sand?

A. There are about eleven completed in the Rosenberg

sand, and there are five wells producing from the twenty-two hundred foot sand.

[fol. 607] Q. Now, without going into technical details, what method do you use for computing gas reserves susceptible of economic recovery?

A. Where we have adequate data about pressures we use the reduction decline method, which is based on Boyle's law, and where we do not have sufficient history to use it the pore space method is used.

• • • • • • • •

Q. In the language of a layman, is that an attempt to compute the space which exists in the sand which may be occupied by gas between the grains of sand?

A. The pore space method is.

Q. What is the pressure decline method that you spoke about, briefly explained?

A. Boyle's law states that the volume of gas varies inversely proportional to the absolute pressure at constant temperature. To simply explain the behavior of that law, if one will think of this room as a tank susceptible of being placed under pressure if gas were taken into it, we will assume we don't know the volume of this space at all, and assume that this tank of unknown volume has a pressure of, we will say, fifteen hundred pounds, and we meter gas out of that tank until the pressure is dropped [fol. 608] down to 750 pounds, and we will say that we have produced one million cubic feet during that interval; then we know that the initial volume present in the reservoir was two million feet and that the remainder is one-half, or one million feet.

Q. • • • As the Carolina-Tex. field depletes, Mr. Ivy, from what field do you plan to get the gas to serve Laredo?

A. The Jennings field, which, of course, puts gas into the Laredo system, and the Martinez field and the Cole-Bruni field.

Q. Where is the Martinez field with respect to the Jennings field?

A. It is located southeast of the Jennings field, approximately ten miles.

• • • • • • • •

Q. Mr. Ivy, did you have anything to do with the connection that exists, if it does exist, between the Cole-Bruni line and the Carolina-Tex. line that is shown on the map there in the uncolored section, being the map which is marked Map 2—did you have anything to do with that line there?

[fol. 609] A. As I recall it, that line was extended across from the gathering system, and in 1930 when we acquired the properties there was no definite information, and in view of the pressures at which wells were going dead at that time it was imperative that we make that tie-in in order to make the Cole-Bruni reserve available to the Laredo market.

Q. Was that tie-in made on your recommendation?

A. I believe it was.

Q. And the wells to which you refer as going dead at that time were the wells in the Carolina-Tex. field?

A. Yes, sir.

Q. Mr. Ivy, based on your experience in the study and estimation of gas reserves as the basis of constructing gas transmission lines and your experience in keeping available adequate supplies of gas for the markets served by United Gas Public Service Company, what is your opinion with respect to whether or not provision for an adequate and uninterrupted supply of gas for Laredo would be made at the present time from a connection solely with the Carolina-Tex. field?

A. To rely only on the Carolina-Tex. gas to support the Laredo market, I think, would be extremely foolhardy and very negligent.

[fol. 610] Q. Now, as gas is brought to the Laredo market from the Jennings field and the Carolina-Tex. field, through what line will it be brought to Laredo?

A. Well, it would flow from the gathering system of the Martinez Field, in the case of that field, through a line that ties into Jennings Junction or thereabouts; I am not familiar with the detail of it; and thence down the pipe line from Jennings Junction to Pescadito Junction, and thence into Laredo.

Q. How do you plan, if it is necessary, to bring gas to Laredo from the Cole-Bruni Field?

A. It would pass across this line (indicating on map), from the Cole——

Q. Are you now referring to the line close to the Bruni Compressor Station connecting with the main trunk of the line in the Carolina-Texas Field?

A. Yes, sir, this line across there (indicating).

Q. And from that point how would it get to Laredo?

A. It would pass town through the line to Aguilares and to Pescadito Junction, and thence into Laredo.

Q. And was that the purpose for which that connection was made?

A. The physical connection, yes, sir.

• • • • • • •

[fol. 611] Q. Well, why would you say that the provision for gas for Laredo by a connection with the Carolina-Texas Field only would be foolhardy?

A. We don't know just when the wells will go dead and cease to produce. From the past history, and the death rate of the wells, why, they might not be producing a year from now, even in the 2200 foot horizon, and the 2000 foot sand here is so nearly depleted and in such a precarious position that I just don't feel that it could be counted on for any support to the Laredo market at all; and the same thing is true of the Webster 2600 foot sand.

Q. And you say that the 3000 foot sand is already dead?

A. Is already depleted, yes, sir.

Q. Do these wells give any advance notice of the time that they are going to go dead?

A. No, sir, not in so far as I am aware.

• • • • • • •

Q. And are the Rosenberg wells which you have included in your computation of the three billion feet, are they connected to the system of United Gas Public Service Company at this time?

A. No, sir.

[fol. 612] Q. But you have included those wells, even though under no purchase contract or any obligation to furnish gas to the United, in order to take in the entire Carolina-Tex. and related areas?

A. Yes, sir.

Q. Now, do you feel, based on your experience, certain that the supply of gas for Laredo in the reasonably near future—that is, the entire supply will come from the Jennings and the Cole-Bruni Fields?

A. Yes, sir, and together with the Martinez Field. That also will support it.

* * * * * * *

Cross-examination.

Questions by Mr. Bobbitt:

Q. Well, you are taking gas from the Carolina-Texas Field, aren't you, from wells that were producing some time ago and then stopped which have come to life and are producing a large flow?

* * * * * * *

A. The wells that were abandoned were deepened to other horizons. In one or two—in a few cases it has been possible to go back into wells and clean them out and lower them, so [fol. 613] they would be able to produce a little longer; but in those cases there has not been any significant amount of gas produced after the reworking jobs, other than the deepening.

Q. Yes. You didn't plan to take gas from the Fansler Field down there until they discovered it, did you? * * *

A. Of course, our work all the time contemplates the development of new reserves that are not now discovered, and, of course, we can't count potentialities into a reserve picture until the gas is actually in sight.

Q. I understand; but I believe you testified that all you are giving is an estimate and your opinion and judgment about that?

A. Exactly, yes, sir.

Q. And there may be ten times as much gas in that area as you now have, so far as you know?

A. Yes, sir, that is true.

* * * * * * *

Q. Well, your concern is taking—you have two transmission lines running out of the Carolina-Texas Field to San Antonio, haven't you?

A. No, sir.

Q. You have how many?

A. We don't have any line running out of the Carolina-[fol. 614] Texas Field to San Antonio. We do have this

physical tie from the Carolina-Texas Field over to a point north of our Bruni Compressor Station in the Cole Field.

Q. Well, your concern is taking gas out of the Carolina-Texas-Bruni Fields and supplying San Antonio and New Braunfels and Austin, and other points in this vicinity, aren't you?

A. Well, those fields are separate and distinct fields, Mr. Bobbitt.

Q. Well, you are taking gas from those fields and supplying it up here, aren't you?

A. We are not taking gas, in so far as I am aware, from the Carolina-Texas Field and moving it into the San Antonio market.

Q. Well, are you taking it from the——

A. The gas that is moving into the San Antonio market is being obtained in the Cole and Bruni Field, roughly outlined here (indicating on map).

Q. Yes.

A. And part of it flows up the line indicated there, through the twelve inch line, and the other part flows out northeast through the fourteen inch line, where additional gas is obtained from the Agua Dulce Field——

[fol. 615] Q. Yes.

A. And from the Sandia Field en route to San Antonio; and also there is gas into the San Antonio market that comes out of the Refugio area at times.

Q. All right; are you through.

A. Yes, sir.

Q. All right. You are taking gas, as you have testified, from the Bruni Field or the Carolina-Texas Field?

A. Not the Carolina-Texas Field.

Q. Well, say, the Bruni, and you are furnishing the Houston market.

A. No, sir.

Q. You are not taking gas out of the Bruni Field and furnishing the Houston market?

A. No, sir.

Q. Where do you take that gas to?

A. The Houston gas fields.

Q. Where are you taking the gas to from the Bruni Field through those lines? That is what I am asking you.

A. To San Antonio.

Q. Where else?

A. That is the only place it flows to.

Q. And it comes on up to New Braunfels and Austin, doesn't it?

[fol. 616] A. Oh, yes. I had in mind the San Antonio market.

Q. Yes. The Houston Pipe Line Company has a large transmission line running out of the Carolina-Texas or the Bruni Field to Houston, have they not?

A. Yes, sir; and they move gas eastward into the Houston market from Carolina-Texas.

Q. Taking large volumes?

A. I don't know just what their daily rate is, but the production I gave a while ago for 1933.

Q. Now, this supply down here that you say in the Jennings Field that you are counting on furnishing Laredo with, you are sending—nearly all the gas you are taking you are sending that to Mexico, aren't you, and down the Valley.

A. The principal gas movement to Mexico is from the Martinez area at this time and from two wells in the Jennings Field.

Q. Yes, sir.

A. But those wells and the gas there is also available for Laredo.

* * * * * * *

Q. The construction and building of those numerous transmission lines, you have testified about indicates that [fol. 617] the people recommending their construction had known there were a lot of gas reserves in that field, didn't they—isn't that true?

A. There is no doubt about that, or they would not have gone to that expense.

* * * * * * *

Q. All of those transmission lines have been constructed subsequent to the Laredo line?

A. Yes, sir, that is my understanding.

* * * * * * *

Redirect examination.

Questions by Mr. Coates:

Q. Now, Mr. Ivy, I believe your testimony shows that of the gas taken from the Carolina-Texas Field in 1933, ap-

proximately 43 per cent of the total take there was by United Gas Public Service Company, and the remaining per cent was taken, so far as transmission lines were concerned, by the Houston Pipe Line Company?

A. Yes, sir.

Q. Now, if United should cease taking gas from the Carolina-Texas Field, what company, in your judgment, would get the remaining amount of the available gas reserves in that field?

A. The Houston Pipe Line Company.

* * * * * * *

[fol. 618] Recross-examination.

Questions by Mr. Bobbitt:

Q. There is a whole lot of territory down there in that country that has not been explored yet, isn't there, Mr. Ivy?

A. There certainly is.

* * * * * * *

[fol. 619] R. H. HARGROVE, a witness for the defendant, upon being recalled, testified as follows:

Direct examination.

Questions by Mr. Coates:

Q. Your name is R. H. Hargrove?

A. Yes, sir.

* * * * * * *

Q. And I believe you testified that you were Vice-President, in charge of production and transmission for United Gas Public Service Company and affiliated companies?

A. Yes, sir.

* * * * * * *

Q. Now, Mr. Hargrove, during 1933 under your direction was a considerable amount of work done in reconditioning

what has been referred to in this record as the Jennings-Pescadito line?

A. Yes, sir.

Q. Do you know in a general way on what part of that line that reconditioning work was done—that is, whether on the upper or lower or middle part?

A. Well, it was slightly south of the middle section, as I recall it, that the principal work was done.

Q. And what was the occasion for doing that work, Mr. Hargrove?

[fol. 620] A. The pipe was in bad condition, and it was necessary to put new pipe in and recondition some sections of the old pipe and replace it.

Q. Why?

A. It had developed an excessive number of leaks at primarily two hot spots in the line.

Q. And what was your purpose in spending this money to get that line back in good condition?

A. To have it in first-class condition to serve the Laredo market through it.

Q. And was that why that money was spent?

A. Yes, sir.

Q. Now, Mr. Hargrove, do you contemplate any further work on that line during 1934?

A. Yes, sir, we plan to recondition about four miles up at the north end of the line, a short distance south of the check meter as shown on that map. We are, in fact, starting on that work now; some of the pipe is on the ground, I believe.

Q. Why are you doing that work?

A. For the same reasons as stated why we did the work in 1933.

[fol. 621] Q. And when that work is done what, in your judgment, will be the condition of that line?

A. It will be in very satisfactory working condition, in my opinion.

Q. Mr. Hargrove, it has been testified here that the purchase price of gas in the Carolina-Texas Field during 1933 was approximately 4.25 or 4.30 cents per M. C. F. at the well-head. Is the price paid to the well owner for gas delivered at the well-head the only expense that United Gas Public Service Company, as purchaser of that gas, incurs

in connection with and reflected in the cost of purchased gas?

A. No, sir, we have an added expense incident to the maintaining of reserves for the system and exploratory work in connection therewith, that is an actual expense over and above the actual amount paid the well owner.

Q. And why don't you just simply rely on independent well owners drilling you wells as you need them and buying all your supply—your gas, instead of keeping on hand reserves yourself and doing exploratory work?

A. The ordinary form of contract under which gas is purchased at the well imposes no obligation on the well [fol. 622] owner other than to deliver such gas as he may have available for delivery; he has no obligation to acquire additional reserves, to drill additional wells, or even to recondition the wells that are already drilled, and obviously we can not rely upon a continued service upon such a condition as that. We have to be in a position to meet the demands of the public by maintaining large reserves of our own that we are in a position to develop as a new occasion arises.

Q. And if you shouldn't do that, and should wait until about the time that the supply from the existing wells was depleted before going out and acquiring gas reserves and getting gas in sight, what would be the situation with respect to serving the company's markets?

A. We might not be able to get it at that time, and the company's markets would be without gas, and our business would be gone.

Q. In your judgment and with respect to the Carolina-Texas Field, does the over-all price of five cents per M. C. F., to represent the cost of purchased gas as distinguished from the purchase price of gas from the independent well owner, represent a very close approximation of the cost of purchased gas?

[fol. 623] A. Yes; we ordinarily figure that we have about a twenty-five per cent increase over the actual purchase price to represent the other cost to us.

Q. And does it work out that way?

A. Yes, sir, in practice it does.

* * * * * * *

Cross-examination.

Questions by Mr. Bobbitt:

• • • • • • • •

Q. Well, what is Mr. Abernathy? I thought he was in charge of the transmission operations.

A. Mr. Abernathy is Superintendent of transmission operations, which is—in his duties he reports to me.

Q. Oh, you are in charge of the transmission operations and he is superintendent?

A. Yes, sir.

Q. You don't have anything to do with the operations down there in the field, do you?

A. Well, all problems arising from them of any importance are referred to me for decision.

Q. He reports to you?

A. Yes, sir.

Q. And you decide them?

A. Yes, sir.

• • • • • • • •

[fol. 624] A. No, my sole affiliations are with the United Gas Public Servite Company and its affiliated companies.

Q. Mr. Abernathy reports to you about those things, and you report to Electric Bond and Share Company, don't you?

A. No, sir, I do not.

Q. Don't you report to one of these sponsors of production or transmission?

A. No, sir • • • I do not. The sponsor spends some time on our properties and confers and advises on different problems. I report to the President of the Company and the Board of Directors.

Q. The sponsor counsels with you?

A. And the other officers of the Company.

Q. And the other officers of the Company, and with Mr. Abernathy?

A. Occasionally.

Q. And then after he gets through, then he reports, of course, to his principals in New York?

• • • • • • • •

A. Yes, sir, I know that he does.

• • • • • • • •

Q. Now, about this exploratory expense which you state the Company goes to in securing gas, in addition to the [fol. 625] purchase price of it, do you mean that you have an exploratory expense in connection with the buying of gas from these boys—these independent boys that drill the gas down there and sell it to you?

A. We have an expense of around $300,000.00 a year maintaining an exploration department, and this is maintained for the purpose of obtaining reserves, partially from our own production and partially from purchases.

Q. Was any of that $300,000.00 spent for the benefit of or in connection with the discovery or the drilling for gas for delivery to your company?

A. Indirectly, yes.

Q. How far indirectly?

A. Of course that could not be stated definitely, but all the exploratory work we do does not mean just for our own production, but if we are in that area and if we find or if we believe it is likely territory, which is owned by independents, and they are drilling the property, we sometimes lend them money to drill it in order to find out the possibilites of it for the purpose of having it available for our operations.

Q. And pay them three cents a thousand for it sometimes.

A. Sometimes, yes.

[fol. 626] Q. Suppose some boy wants to go out there and drill in Zapata and Jim Hogg county maybe, as many of them do.

A. Yes.

Q. They do their own exploring, don't they, and spend their own money and stand their own exploratory expense, don't they?

A. Not altogether.

Q. Have you ever made a geological report, at any expense to your company, and delivered them to an independent gas driller out in any of those counties?

A. I don't recall that we have ever put it down in writing and delivered it to them, but we have advised them many times and in fact we do every day. We maintain a department in Houston and we run their samples and make tests on their cores, without any service expense to them, and we do that in order to make it available to our

system if they do develop something, and that is the purpose of it.

* * * * * * *

[fol. 627] P. McDonald Biddison, a witness for the defendant, recalled.

Direct examination.

Questions by Mr. Coates:

* * * * * * *

Q. And have you either heard or read and studied, or both, Mr. Elrod's testimony to the effect that in spite of the fact that these transmission lines included in his appraisal, have existing in them substantial quantities of new pipe, installed since the date of the original installation of the line, and have been reconditioned one or more times, that the deduction he has made to reflect existing depreciation is, in the main, a computation of the number of years between the date of original installation times three?

A. I have.

Q. And I believe you testified that in your judgment a proper reserve accrual for transmission lines in this area would be six per cent per annum on the reproduction cost new of the properties?

A. That is correct.

Q. In studying this testimony, showing the results of Mr. Elrod's studies and observations, does that change your mind with respect to the six per cent per annum reserve accrual?

[fol. 628] A. No, my study of the testimony fortifies my opinion.

* * * * * * *

Q. Mr. Biddison, did your study disclose that the 33 year life on which or about which Mr. Elrod testified, contemplated the average span of years in service of these transmission lines, as lengthened by ordinary maintenance only, but contemplating retirements on account only of physical deterioration and corrosion?

(Plaintiffs object; objection overruled.)

A. That is my understanding of the testimony.

Q. Now, in computing reserve accruals, do you have to take into account not only retirements on account of physical deterioration and corrosion, but on account of other causes of retirement in the case of transmission lines?

A. You most assuredly do.

Q. Then does a 33 year average life, contemplating as it does retirements only on account of corrosion and physical deterioration, fairly represent the basis for computation of a reserve accrual to cover all causes of retirement and replacement?

. . . . . .

A. No, it does not.

Q. Why not?

. . . . . .

[fol. 629] A. Now, as I understand the question, I am asked why this three per cent accrual rate does not fairly represent the requirements?

. . . . . .

A. The reasons why this average life does not provide the basis for determination of the retirements and replacements requirements, is in the first place that if the life be on the average 33½ years, then unless the life of each individual constituent be 33 1/3 years, the rates of replacement due to physical deterioration will be alone in excess of three per cent, and secondly, the basing of the accrual rate on that average life figure, determined by physical deterioration alone, does not take into account the very important proportion of retirements and replacements caused by other reasons.

Q. What are those other reasons?

A. Shifting of gas fields; changing of streets and roads; growth of markets; shifting of markets; public requirements, and there are a host of other reasons that cause retirements and replacements of property in a system such as this.

Q. Have you made studies with respect to retirements of both gas transmission and gas distribution properties such as these, to determine what proportion of the retire-
[fol. 630] ments actually made were due alone to physical

deterioration and corrosion and what proportion were due to other causes?

A. I have.

Q. And what, as a general average, does that study disclose?

A. As a general average, it disclosed that on a distribution property the retirements and replacements are only about 70 per cent due to the physical condition of the equipment, and on a transmission property, it is a figure of the order of 50 per cent by retirements and replacements due to the physical condition.

Q. And the other or the remaining 30 per cent of the cases in distribution properties and the remaining 50 per cent of the cases in transmission properties, based on your study—are those retirements due to causes other than physical deterioration and corrosion, which you have mentioned?

A. That is correct.

Q. Mr. Biddison, where you have a property in which there has been a substantial number of replacements of joints of pipe and a reconditioning of substantial parts of the pipe and pipe line since the date of installation, does the application of an average life, such as the 33 years applied here, overstate or understate the depreciation actually existing in such property at the present time.

[fol. 631] A. In every case of which I have any knowledge it grossly overstates the accrued depreciation on the property.

Q. And by accrued depreciation, you mean the depreciation actually existing?

A. Yes.

* * * * * * *

Q. Mr. Biddison, why do you state that the application of a 33 year life of the character shown here to reflect existing depreciation in transmission lines, in which there have been a substantial number of replacements of joints of pipe since the date of installation, and a substantial reconditioning of those lines, overstates the depreciation existing in these particular lines under consideration here.

The Court: Now, I sustain the objection to that because he answered that question, substantially, just five minutes ago, except you did not use the word, Overstated. You have asked him exactly why it did not apply.

Mr. Coates: I was talking while ago about the reserve accrual and now I am talking about the existing depreciation. It applies both ways; one would be to the existing depreciation in the line, and the other to the reserve accrual, which would be two different things.

. . . . . .

[fol. 632] The Court: He may answer the question.

A. Because that age-life method gives no consideration whatever to those replacements which may be a large portion of the line, and very materially affect the actual condition of the line as a whole on the average.

Q. And do you mean by "affect" an increase in the actual condition of the line as a whole on the average?

A. Increase it very materially over the proportion which the age of the line bears to the average life.

. . . . . .

[fol. 633] H. E. Womack, recalled by the defendant.

Direct examination.

Questions by Mr. Coates:

. . . . . .

Q. Mr. Womack, is there found in each of the operating statements which you have introduced in evidence an item under the account classification "General Expense" termed "Regulatory Commission Expense"?

A. There is.

Q. And have you made a computation and an examination of the accounts of the Company to determine the total amount of Regulatory Commission Expense which has been incurred by the Commission in connection with this investigation down to but not including the expenses of this present trial?

A. Yes; I have.

Q. And, Mr. Womack, is the amount which you have included in your operating statements for Regulatory Commission Expense less than one-tenth of the total amount of Regulatory Commission Expense that has been incurred thus far in connection with this investigation?

A. There is included in the operating expenses for the twelve months of the calendar year 1932, and for the calen-
[fol. 634] dar year 1933, less than one-tenth of the total cost incurred by the company in connection with this Laredo Case in the years 1932 and 1933.

Q. And are the figures which you have included in these operating expenses less than they would have been if the total cost down to, but not including the cost of this trial, had been spread and amortized over a ten-year period?

A. Yes.

* * * * * * *

[fol. 635] J. A. PHILLIPS, a witness for defendant, having been duly sworn, testified as follows:

Direct examination.

Questions by Mr. Coates:

Q. Your name is J. A. Phillips and you are a certified public accountant; is that correct?

A. That is correct.

Q. And how long have you been in the accounting business, Mr. Phillips?

A. For approximately seventeen years.

Q. Have you had a substantial amount of experience with respect to the examination of the books, records, and accounts reflecting the results of operations of public utility companies?

A. I have.

Q. And gas companies?

A. I have.

Q. Mr. Phillips, have you either heard or read the official record of the testimony of the witness Leon O. Lewis in this case?

A. I have heard much of Mr. Lewis' testimony, and I have read the record pertaining to all of Mr. Lewis' testimony except that which I heard this morning.

[fol. 636] Q. Have you familiarized yourself in a general way with the location of the properties which are here in issue?

A. Yes; I have familiarized myself with the general location of these properties.

Q. And have you familiarized yourself with the markets served by the transmission properties which are here in issue?

A. Yes; I have.

Q. And have you examined the records of United Gas Public Service Company sufficiently to familiarize yourself with the way in which that company operates these transmission lines and the way it accounts for the operating expenses and revenues?

A. Well, I have not examined the records in detail; but I have examined their method of distributing expenses and accounting for revenues.

Q. Did you ascertain from that that the Company's method of operation with respect to transmission lines is what is termed "Integrated Operation from Central Operating Points"?

A. Yes.

Q. In your judgment, based on your practical experience as an accountant, Mr. Phillips, would it be practical as an accounting proposition for the Company to attempt to distribute on its books each type of expense to each separate [fol. 637] transmission line and part thereof which it operates?

A. It would not.

* * * * * * *

Q. Mr. Phillips, did you hear or else read the testimony of Mr. Lewis with respect to Voucher J-10-157, wherein Mr. Lewis gave testimony to the effect that such voucher reflects that United Gas Public Service Company when it acquired the properties of South Texas Gas Company had recorded the value of these properties on its books at approximately $934,000.00?

A. Yes; I heard some of Mr. Lewis's testimony in respect to that journal voucher and I read the record in respect to all of his testimony in reference to journal Voucher 10-157.

Q. Have you examined the original of this voucher?

A. I have.

Q. Have you likewise examined the balance sheet of South Texas Gas Company just prior to its merger with United Gas Public Service Company?

A. Yes; I examined the balance sheet of that company showing its condition just prior to the merger.

Q. What conclusion did you reach from the examination of this voucher J-10-157?

A. Well, I reached the conclusion by very casual examination of the coucher that it certainly had to do with proper-
[fol. 638] ties and values not actually recorded on the voucher. First of all, the voucher records the cancellation of capital stock. It sets out a reacquisition of bonds; and it suggests by the nature of the voucher that in merging the assets of the South Texas Gas Company with the assets of the United Gas Public Service Company——

* * * * * * *

The Court: The witness says the voucher suggests such and so to his mind.

* * * * * * *

A. I am testifying, using accounting terminology, that that is what the voucher itself suggests to any accountant; that is my testimony.

* * * * * * *

A. I may repeat, because I don't remember just where I had gotten. But the voucher itself makes reference to the cancellation of capital stock, and to the reacquisition of securities, all of which would make plain to an accountant that there were other assets back of the picture than the particular assets referred to in Mr. Lewis' testimony. It is difficult to understand how otherwise you could bring about the cancellation of the number of shares of stock the voucher discloses.

* * * * * * *

[fol. 639] Q. From your accounting experience, and your knowledge of proper and accepted and approved accounting principles, is it your judgment and your testimony that this voucher reflects the recording by United Gas Public Service Company on its books of the value of the properties of South Texas Gas Company at any such amount as $934,000.00?

A. No; it does not disclose that to me.

Q. On the other hand, does it disclose that the value of those properties were recorded on the books of United Gas Public Service Company at an amount greatly in excess of $934,000.00?

A. An examination of the support to the voucher clearly reflects that there were values most substantially in excess of the item of $934,000.00 plus.

• • • • • • • •

Q. From your examination of that voucher, Mr. Phillips, what value of the South Texas Gas Company's properties does it reflect?

• • • • • • • •

A. The voucher itself does not reflect the value of the properties, or the value at which they were carried on the Company's books.

Q. Does the examination of the voucher, plus the examination of the books, records, and accounts underlying, in support of the voucher, reflect the values?

• • • • • • • •

[fol. 640] A. Yes.

Q. Can you state what those values were which were reflected by the voucher, plus the records, books and accounts of the South Texas Gas Company, involved in that merger?

(Plaintiffs' objection to question sustained; defendant excepts.)

Q. From your examination of this voucher and the books, what value is shown, in your opinion, based on your examination,—is given to the properties and assets of South Texas Gas Company involved in that transaction?

A. In my opinion, the properties and assets are valued as follows: Investments and Capital Stock and Bonds, Loans and Advances, $7,892,061.10.

Mr. Bobbitt: What is that figure?

A. $7,892,061.10. Another asset representing the excess of the investment for South Texas Gas Company in Texas Border Gas Company at the date of the merger, $113,912.70; Book value of plant and property, $2,788,651.24; Cash Receivables, Materials and Supplies, and so forth, $75,884.75; representing the assets, in my opinion, that were merged with the purchasing company, in connection with this voucher.

• • • • • • • •

Q. Give the total figure, Mr. Phillips.

A. $10,870,509.79.

[fol. 641] Q. Reflecting the total assets of the South Texas Gas Company at that time?

A. In my opinion reflecting the total value of the assets of the South Texas Gas Company that were merged with the purchasing company at this time.

* * * * * * *

(Defendant rests.)

End of statement of facts.

[fol. 642] IN DISTRICT COURT OF TRAVIS COUNTY

[Title omitted]

MOTION OF DEFENDANT TO SUBMIT CASE ON SPECIAL ISSUES AND ORDER OVERRULING SAME—Filed April 5, 1934

Comes now the defendant, United Gas Public Service Company, in the above entitled and numbered cause, at the conclusion of all the testimony and after the Court has overruled its motion for a peremptory instruction and its motions to suspend the order of the Railroad Commission for the years 1932, and 1933, and without waiving said motions, and after the Court has indicated his intention and purpose to submit the case to the jury, and moves the Court to submit the case to the jury on special issues and not to submit the case to the jury upon a special charge.

(Signature of counsel omitted.)

ORDER

Submitted to opposing counsel and to the Court after the motions above described had been overruled by the Court and submitted and requested prior to the submission of the Charge of the Court to the Jury. The motion is hereby on the 5th day of April, 1934, refused and overruled; because in the opinion of the Court the charge submitted is on Spe-

[fol. 643] cial issue and therefore complies with the request to which action of the Court defendant in open court here now excepts.

C. A. Wheeler, Judge.

[File endorsement omitted.]

[fol. 644] IN DISTRICT COURT OF TRAVIS COUNTY

[Title omitted]

DEFENDANT'S SPECIALLY REQUESTED ISSUE No. 10—Filed April 5, 1934

Comes now Defendant United Gas Public Service Company at the conclusion of all the evidence herein and after the Court has overruled said Defendant's motion for peremptory instruction, and after the Court has overruled defendant's motions to deny plaintiffs any relief herein on the order of the Railroad Commission of Texas for the years 1932 and 1933, and without waiving said motions, and after the Court has indicated his intention to submit the case to the jury, and now moves the Court to submit to the jury Defendant's Specially Requested Issue No. 10 hereto attached.

(Signature of counsel omitted.)

ORDER

Submitted to opposing counsel and to the Court after the motions above described had been overruled by the Court, and requested prior to the submission of any issue or charge to the jury. The request to submit the attached special issue is hereby on the 5th day of April, A. D. 1934, refused, to which Defendant in open Court here and now [fol. 645] excepts.

C. A. Wheeler, Judge.

What do you find from the preponderance of the evidence in this case was the fair and reasonable value during the year 1933 of the physical operating properties and parts thereof of United Gas Public Service Company, exclusive of materials and supplies, cash working capital or working cash, and going value, used and useful in transporting, distributing and serving natural gas to the inhabitants of the City of Laredo? In answering this question, please state such fair and reasonable value for the following portions of such properties:

(1) Distribution System property $—.
(2) Transmission system property $—.
(3) Gathering system property $—.

[File endorsement omitted.]

[fol. 646] IN DISTRICT COURT OF TRAVIS COUNTY

DEFENDANT'S SPECIALLY REQUESTED ISSUE No. 12—Filed April 5, 1934

[Title, Motion to Submit, and Court's Refusal to Submit All Omitted]

What do you find from the preponderance of the evidence in this case was the fair and reasonable value during the year 1932 of the physical operating properties and parts thereof of United Gas Public Service Company, exclusive of materials and supplies, cash working capital or working cash, and going value, used and useful in transporting, distributing and serving natural gas to the inhabitants of the City of Laredo? In answering this question, please state such fair and reasonable value for the following portions of such properties:

(1) Distribution system property $—.
(2) Transmission system property $—.
(3) Gathering system property $—.

[File endorsement omitted.]

[fol. 647] IN DISTRICT COURT OF TRAVIS COUNTY

DEFENDANT'S SPECIALLY REQUESTED ISSUE No. 14—Filed April 5, 1934

[Title, Motion to Submit, and Court's Refusal to Submit All Omitted]

What do you find from the preponderance of the evidence in this case was the fair and reasonable value during the year 1933 of materials and supplies for the operating properties of United Gas Public Service Company used or useful in transporting, distributing and serving gas to the inhabitants of the City of Laredo? Please state your answer in dollars.

Answer. $—.

[File endorsement omitted.]

[fol. 648] IN DISTRICT COURT OF TRAVIS COUNTY

DEFENDANT'S SPECIALLY REQUESTED ISSUE No. 15—Filed April 5, 1934

[Title, Motion to Submit, and Court's Refusal to Submit All Omitted]

In answering the following question, you are instructed that by the term "cash working capital or working cash" is meant that amount of free capital reasonably necessary for the efficient and economical transaction of the company's business so as to enable it to pay its current operating expenses when due, take cash discounts, provide for prepaid expenses and maintain a good cash and credit position with its creditors and banking institutions rendering it banking service.

What do you find from the preponderance of the evidence in this case is the fair and reasonable amount of cash working capital or working cash, as the term has been hereinabove defined for you, for the operation of defendant's business of gathering, transporting, distributing and serving natural gas to the inhabitants of the City of Laredo for the year 1933? Please state your answer in dollars.

Answer. $—.

[File endorsement omitted.]

[fol. 649] IN DISTRICT COURT OF TRAVIS COUNTY

DEFENDANT'S SPECIALLY REQUESTED ISSUE No. 16—Filed April 5, 1934

[Title, Motion to Submit, and Court's Refusal to Submit All Omitted]

In answering the following question, you are instructed that by the term "cash working capital or working cash" is meant that amount of free capital reasonably necessary for the efficient and economical transaction of the company's business so as to enable it to pay its current operating expenses when due, take cash discounts, provide for prepaid expenses and maintain a good cash and credit posi-

tion with its creditors and banking institutions rendering it banking service.

What do you find from the preponderance of the evidence in this case is the fair and reasonable amount of cash working capital or working cash, as the term has been hereinabove defined for you, for the operation of defendant's business of gathering, transporting, distributing and serving natural gas to the inhabitants of the City of Laredo for the year 1932? Please state your answer in dollars.

Answer. $—.

[File endorsement omitted.]

[fol. 650] IN DISTRICT COURT OF TRAVIS COUNTY

DEFENDANT'S SPECIALLY REQUESTED ISSUE No. 17—Filed April 5, 1934

[Title, Motion to Submit, and Court's Refusal to Submit All Omitted]

By the term "going value" as used in the following question is meant that element of value inhering in an operating property over and above the sum of the values of its component parts, which is attached to it by reason of the fact that it is a going concern, has its business established, and trained operating personnel and is in connected and coordinated operation.

What do you find from the preponderance of the evidence in this case to be the amount of going value inhering in the plant and properties of United Gas Public Service Company employed in gathering, transporting, distributing and serving natural gas to the inhabitants of the City of Laredo in the year 1933?

Answer. $—.

[File endorsement omitted.]

[fol. 651] IN DISTRICT COURT OF TRAVIS COUNTY

DEFENDANT'S SPECIALLY REQUESTED ISSUE No. 18—Filed April 5, 1934

[Title, Motion to Submit, and Court's Refusal to Submit All Omitted]

By the term "going value" as used in the following question is meant that element of value inhering in an operating property over and above the sum of the values of its component parts, which is attached to it by reason of the fact that it is a going concern, has its business established, a trained operating personnel and is in connected and coordinated operation.

What do you find from the preponderance of the evidence in this case to be the amount of going value inhering in the plant and properties of United Gas Public Service Company employed in gathering, transporting, distributing and serving natural gas to the inhabitants of the City of Laredo in the year 1932?

Answer. —.

[File endorsement omitted.]

[fol. 652] IN DISTRICT COURT OF TRAVIS COUNTY

DEFENDANT'S SPECIALLY REQUESTED ISSUE No. 19—Filed April 5, 1934

[Title, Motion to Submit, and Court's Refusal to Submit All Omitted]

What do you find from the preponderance of the evidence in this case was the average cost per 1,000 cu. ft. to the United Gas Public Service Company in the year 1933 at the well mouth of gas transported, distributed and served to the inhabitants of the City of Laredo, taking into consideration the average price paid to the well owners for such gas plus any additional cost, if any, incurred by the United Gas Public Service Company, in connection with the gas purchased from such well owners?

Answer. —.

[File endorsement omitted.]

[fol. 653] IN DISTRICT COURT OF TRAVIS COUNTY

DEFENDANT'S SPECIALLY REQUESTED ISSUE No. 24—Filed April 5, 1934

[Title, Motion to Submit, and Court's Refusal to Submit All Omitted]

Do you find from the preponderance of the evidence in this case that 3% of $885,000 is a fair and reasonable amount for United Gas Public Service Company to set aside annually in a reserve to provide for depreciation, retirements and replacements?

Answer. —.

[File endorsement omitted.]

[fol. 654] IN DISTRICT COURT OF TRAVIS COUNTY

DEFENDANT'S SPECIALLY REQUESTED ISSUE No. 25—Filed April 5, 1934

[Title, Motion to Submit, and Court's Refusal to Submit All Omitted]

What percentage of reproduction cost new of the depreciable items distribution system property of the United Gas Public Service Company involved in this case do you find from the preponderance of the evidence in this case should be set aside annually in a reserve to provide for depreciation, retirements and replacements for the year 1933?

Answer. —%.

[File endorsement omitted.]

[fol. 655] IN DISTRICT COURT OF TRAVIS COUNTY

DEFENDANT'S SPECIALLY REQUESTED ISSUE No. 28—Filed April 5, 1934

[Title, Motion to Submit, and Court's Refusal to Submit All Omitted]

What percentage of reproduction cost new of the depreciable items of the transmission system property used or useful to transport gas to the City of Laredo do you find from the preponderance of the evidence in this case should be set aside annually in a reserve to provide for depreciation, retirements and replacements of such transmission system property?

Answer. —%.

[File endorsement omitted.]

[fol. 656] IN DISTRICT COURT OF TRAVIS COUNTY

DEFENDANT'S SPECIALLY REQUESTED ISSUE No. 30—Filed April 5, 1934

[Title, Motion to Submit, and Court's Refusal to Submit All Omitted]

What percentage of the reproduction cost new of the depreciable items of gathering system property used and useful to gather the gas transported and served to the inhabitants of the City of Laredo do you find from the preponderance of the evidence in this case is a fair and reasonable percentage to set aside annually in a reserve to provide for depreciation, retirements and replacements of such gathering system property?

Answer. —%.

[File endorsement omitted.]

[fol. 657] IN DISTRICT COURT OF TRAVIS COUNTY

[Title omitted]

CHARGE OF THE COURT—Filed April 5, 1934

GENTLEMEN OF THE JURY:

This cause will be submitted to you on a special issue in the form of a question, which you will answer from the evidence introduced before you as hereinafter instructed, and your answer to this special issue will constitute your verdict in this case. You will write your answer to the special issue upon the separate paper handed you herewith, numbered in proper form for your answer. You will select one of your number as foreman, who will preside over your deliberations and who will sign your verdict for you when you have agreed upon it.

You are the exclusive judges of the facts proved, of the credibility of the witnesses, and of the weight to be given to the testimony, and you will decide the issue submitted according to the evidence: but you must receive the law from the Court, as given in this Charge, and be governed thereby.

As to the rules of law applicable to the issue to be determined by you, and to assist you in answering said special issue, you are instructed as follows:

[fol. 658] 1. By "fair return" is meant that the United Gas Public Service Company is entitled to earn a rate on the present fair value of its property which it employs for the convenience of the public equal to that generally being made at the same time within the same general part of the country upon investments in other business undertakings which are attended by like risks and uncertainties.

The rate of return should be reasonably sufficient to assure confidence in the financial soundness of the utility and should be adequate under efficient and economical management to maintain and support its credit and enable it to raise money necessary for the proper discharge of its duties.

2. By "fair value" is meant the reasonable worth of the property at this time that is being used and useful in the public service.

3. By the term "used and useful" is meant that it embraces all that property now actually being used by the United Gas Public Service Company to serve the public and also such property as is reasonably necessary to enable it to perform continuous and efficient service.

4. By "operation expenses" is meant such expenses as are incurred by the United Gas Public Service Company [fol. 659] in the operation of its property in furnishing gas to the people of Laredo, Texas.

5. By "annual depreciation" is meant the amount per annum that is reasonably necessary to compensate for the wearing out and any necessary replacements and retirements of property of the United Gas Public Service Company.

6. By "reproduction cost new" is meant the cost to the owner under the conditions which may reasonably be expected to exist if the property were to be reproduced new.

7. By "going value" is meant the added value of this defendant's plant and property as a whole, used and useful for serving the city of Laredo, over the sum of the values of its component parts which is attached to it by reason of the fact that it is an operating, assembled and established property, functioning with a trained personnel, a co-ordinated plant and property, with customers attached, and its business established.

8. There have been introduced in evidence before you in this case certain findings and conclusions of the Railroad Commission of Texas and also certain transcripts of evidence and exhibits which were before the Railroad Com- [fol. 660] mission at its hearing of the matter now on trial; and you are instructed that as to such findings, conclusions, evidence and exhibits you may consider same for the purpose for which same were admitted in evidence on this trial—that is, for the purpose of assisting you (if same does assist you) in determining whether the order of the Railroad Commission of date June 13, 1933, is unreasonable and unjust to defendant, and for no other purpose.

9. You are instructed that the burden of proof is upon the defendant. United Gas Public Service Company, to show

by clear and satisfactory evidence that the rate promulgated by the Railroad Commission in its said order of June 13, 1933, is unreasonable and unjust as to it.

10. You are further instructed that in determining your answer to said issue in the light of all the evidence introduced in this case the defendant, United Gas Public Service Company, is entitled to receive a fair return at this time on the present fair value of its property that is used and useful in the public service after first deducting all necessary operating expenses and a fair and reasonable amount for the annual depreciation of said property, and that in considering what is a fair value of said property you will take into consideration all elements of value that [fol. 661] have been introduced in evidence before you, including reproduction cost new of said property and the amount of going value (if any) that inheres in said property.

11. By "unreasonable and unjust" is meant that the rate prescribed and adopted in the said order of the Railroad Commission was so low as to have not provided for a fair return upon the fair value of defendant's property used and useful in supplying the service furnished by the United Gas Public Service Company to the inhabitants within the city of Laredo, Texas.

Now, bearing in mind the foregoing definitions and instructions, you will answer the following special issue:

Special Issue No. 1. Do you find that the order of the Railroad Commission of Texas bearing date June 13, 1933, providing for a fifty-five cent gas rate to residential consumers within the city of Laredo, Texas, under the facts introduced in evidence before you, is unreasonable and unjust as to defendant, United Gas Public Service Company. Answer this question "yes" or "no".

C. A. Wheeler, Judge Fifty-third Judicial District.

[File endorsement omitted.]

[fol. 662] In District Court of Travis County

[Title omitted]

Defendant's Objections and Exceptions to the Court's Charge and Order Overruling Same—Filed April 5, 1934

Defendant excepts and objects to the Court's Charge as a whole and to each and every portion and paragraph thereof because the same is a general charge, contrary to the laws of Texas requiring issues of fact to be submitted to the jury on special issues when requested; and because the same denies to the defendant a full, fair and complete judicial review upon specific findings as to each disputed fact issue in evidence before the jury, and because the submission of such Charge denies to this defendant a full fair and complete hearing and determination of the separate and essential elements entering into the reasonableness and legality of the Commission's order and entering into the effect of the enforcement of such order upon this defendant's rights.

* * * * * * *

II

Because such Charge constitutes an arbitrary and unlawful denial of defendant's right to a judicial determination [fol. 663] of the reasonableness of the Commission's said order and the rate fixed therein upon the independent judgment of the jury as to the facts and upon the independent judgment of the Court as to the law, * * *

*

III

Because such Charge denies to this defendant a determination by the jury of each ultimate issue of fact as to which the evidence is disputed with respect to present fair value, net operating revenues, rate of return, and rate of reverse accrual upon the Federal question raised by the defendant's answer in this case, namely, whether or not the effect of the enforcement of the Commission's said order and the rates prescribed therein take defendant's property and the use thereof without due process of law, contrary to the Four-

teenth Amendment to the Constitution of the United States, and denies to this defendant the equal protection of the laws, contrary to the Fourteenth Amendment to the Constitution of the United States, and denies to this defendant the right on this trial to reserve for review the determination of such ultimate fact issues separately, and prevents the defendant from reserving for review by the appellate courts [fol. 664] the legality of the separate determinations of such ultimate fact issues as fair value, net operating revenues, rate of return, and rate of reserve accrual, and prevents this defendant from reserving for review the erroneous application of correct principles of rate-making law to the facts found, and prevents this defendant from knowing and reserving for review by the appellate courts whether there have entered into the answer to the single question propounded by the Court to the jury findings made without evidence to support them, findings made contrary to the evidence in the case, findings made upon mixed questions of law and fact, and findings made upon the attempted application by the jury of inadmissible evidence admitted in evidence in the record here over the objection of this defendant.

* * * * * * *

IV

Because such Charge is based upon the erroneous assumption that this action is an appeal under the Texas Statutes and particularly Article 6059 of the Revised Civil Statutes of Texas, 1925, and ignores and excludes from the jury the determination of the Federal questions pleaded and urged by defendant in this case, namely, denial of due process by confiscation of defendant's property from the [fol. 665] effect of the Commission's said order and the rate fixed therein, and denial of the equal protection of the laws by the enforcement of the Commission's said order and the rate fixed therein.

* * * * * * *

XI

Defendant objects and excepts to paragraph 9 of the Court's Charge, being the Court's instruction upon the burden of proof, in so far as such objection is made applicable to the determination by the jury in this case of the Federal

questions involved, namely, the taking of its property without due process and the denial of equal protection under the Fourteenth Amendment to the Constitution of the United States, as such Federal questions have been above defined, because such instruction upon the burden of proof denies to this defendant a determination of the issues of fact in this case by the jury upon its own independent judgment as to the facts shown by the preponderance of the evidence, and because the same places an undue burden upon this defendant, in that the defenses pleaded and set up by the defendant here are not only that the order of the Railroad Commission and the fifty-five cent rate prescribed in said order were each illegally and unlawfully made and denied this defendant a [fol. 666] full and fair hearing and all rights incident thereto, but that said order is unjust and unreasonable and unlawful because made without evidence to support it and upon findings made contrary to the evidence and the record before the Commission and because made by methods contrary to principles of law and equity; the defendant has also pleaded and set up as its defense to this suit to enforce the Commission's said order and said fifty-five cent rate and to impose the same upon this defendant from January 1, 1932, and for the future, that the effect of said order is to take defendant's property and the use thereof without due process of law and to deny this defendant the equal protection of the laws, and because the effect of such order as disclosed by the undisputed testimony in the record in this case is to deny this defendant its rights under the Fourteenth Amendment to the Constitution of the United States as above described, and because such instruction permits the jury to answer Special Issue No. 1 "No" regardless of the effect of the Commission's said order and said fifty-five cent rate from and after January 1, 1932, down to the present date, and imposes upon this defendant too great a burden in each and all of the above respects; * * * and denies to this defendant a full and fair hearing and a record of a full and fair hearing which permits this defendant to adequately and [fol. 667] properly reserve for review by the appellate courts the ultimate issues of fact entering into the jury's determination of special issue No. 1.

Defendant further objects and excepts to said instruction upon the burden of proof because the same indicates

and points out to the jury the effect of their answer to Special Issue No. 1 and defeats the fundamental purpose of submitting the case on special issues, which is to enable the jury to return a verdict on fact issues without being aware of the legal effect of their answers.

• • • • • • •

XIII

Defendant objects and excepts to Special Issue No. 1 for each and all of the following reasons:

• • • • • • •

(f) Because said issue is multifarious and duplicitous and submits more than one question of fact to the jury in one issue, in that it submits the question of fair value of the property used and useful in serving Laredo, fair rate of return, rate of depreciation, the effect of the rate on the future business and the question of revenues and expenses, in one question.

[fol. 668] (g) Because said issue submits a question of law to the jury, the question of the reasonableness and justness of the order of the Commission being a question of law after a determination of the facts as to fair value, rate of return, rate of reserve accrual, and revenues and expenses for a proper test period.

• • • • • • •

XVI

Defendant objects and excepts to the Court's Charge and each and every part and portion thereof, because the same fails to submit to the jury the ultimate issues of fact reflected by the evidence in the case, and because it submits to the jury a question of law to be determined by the Court and not proper for determination by a fact-finding body, such as the jury in this case, namely, the question as to whether or not such order of June 13, 1933, and the fifty-five cent rate are just and reasonable, the justness and reasonableness of such order being a question of law to be determined by the Court on the basis of the ultimate issues of fact as to value, net operating revenues, reasonable

annual rate of return, and reasonable annual rate of reserve accrual, as found by the jury.

* * * * * * *

[fol. 669] ORDER

The above and foregoing objections and exceptions having been made and reduced to writing within a reasonable time after the Court's Charge was presented to counsel for defendant, United Gas Public Service Company, and before said Charge was read to the jury, and having been presented to and considered by the Court before said Charge was read to the jury, each and all of such objections and exceptions were by the Court overruled, to which action of the Court defendant then and there in open court excepted, and said objections and exceptions are ordered filed as a part of the record in this case.

April 5th, 1934.

C. A. Wheeler, Judge Fifty-third Judicial District.

[File endorsement omitted.]

[fol. 670] IN DISTRICT COURT OF TRAVIS COUNTY

[Title omitted]

VERDICT—Filed April 10, 1934

We, the jury, answer the issues submitted to us in this case as follows:

Answer to Special Issue No. 1. No.

Fred W. Sassman, Foreman.

[File endorsement omitted.]

[fol. 671] IN DISTRICT COURT OF TRAVIS COUNTY

[Title omitted]

MOTION OF DEFENDANT FOR JUDGMENT NON OBSTANTE VERDICTO—Filed April 12, 1934

Comes now the defendant United Gas Public Service Company, and, after the verdict of the jury has been re-

ceived and filed by the Court, files this, its motion for judgment non obstante verdicto, and in support thereof respectfully represents to the Court:

* * * * * * *

II

That it is and would be proper for the Court to disregard the verdict of the jury and the answer of the jury to the special issue No. 1, which is the only issue submitted to the jury, and to render a judgment non obstante verdicto herein for the further reason that the said answer of the jury to said issue in the negative has no support in the evidence.

The evidence most favorable herein to the plaintiffs shows the order of the Railroad Commission to be unjust and unreasonable and also confiscatory, and by considering only the lowest valuation made of defendant's prop- [fol. 672] erty used and useful in serving the City of Laredo testified to and in evidence in this case, and by considering only the lowest reasonable rate of return testified to and in evidence herein, and by considering only the lowest amount for annual depreciation testified to and in evidence in this case, and by considering only the lowest amount of gross revenues and operating expenses testified to and in evidence herein for the period of the Railroad Commission's order from January 1, 1932, down to date, and for the only proper and legal period which can be considered the order of the Commission is shown to be unjust and unreasonable, and is shown to be confiscatory.

Wherefore, premises considered, defendant United Gas Public Service Company, prays that this, its motion for judgment non obstante verdicto be granted and that a judgment be entered for the United Gas Public Service Company and against all of the plaintiffs herein decreeing that the relief herein prayed for by the plaintiffs for the enforcement of the order of the Railroad Commission be denied, and that the defendant United Gas Public Service Company recover all of its costs in this behalf expended.

(Signature of counsel omitted.)

[File endorsement omitted.]

[fol. 673] IN DISTRICT COURT OF TRAVIS COUNTY

[Title omitted]

ORDER OVERRULING DEFENDANT'S MOTION FOR JUDGMENT NON OBSTANTE VERDICTO—Filed April 12, 1934

* * * * * * *

It is, Therefore, Ordered, Adjudged and Decreed by the Court that the motion of the defendant United Gas Public Service Company for judgment non obstante verdicto be and the same is hereby in all things overruled.

C. A. Wheeler, Judge.

(Notation of entry of order in the Court's Minutes omitted.)

[fol. 674] IN DISTRICT COURT OF TRAVIS COUNTY

52,774

THE STATE OF TEXAS et al.

VS.

UNITED GAS PUBLIC SERVICE COMPANY

JUDGMENT—April 24, 1934

On the 7th day of March, A. D. 1934, came on to be heard the above styled and numbered cause, wherein the State of Texas, Lon A. Smith, C. V. Terrell and Ernest O. Thompson, in their official capacity as members of and composing the Railroad Commission of Texas, Miriam A. Ferguson, in her official capacity as Governor of the State of Texas, James V. Allred, in his official capacity as Attorney General of the State of Texas, the City of Laredo, a municipal corporation, Albert Martin, in his official capacity as mayor of the City of Laredo, Louis Franklin, W. S. Cantrell, E. S. Russell, T. Leyendecker, H. Cluck, J. Henry, and B. Salinas, in their official capacity as members of and composing the City Council and governing body of the City of Laredo, and M. J. Raymond, in his official capacity as City Attorney of the City of Laredo, are plaintiffs, and the United Gas Public

Service Company, a corporation, is defendant, and came the said parties herein and announced ready for trial, and [fol. 675] came a jury of good and lawful men, to-wit: Fred S. Sasman and eleven others, who being duly impaneled and sworn and having heard the pleadings, the evidence and the argument of counsel from day to day, did on the 6th day of April, A. D. 1934, retire to consider of their verdict in response to the following special issue and legal explanations and definitions in connecton therewith submitted to them by the court:

(Charge of the Court set out on pp. 657-661 of this Transcript of record was here repeated verbatim).

And in answer to said special issue as submitted to them by the court, said jury duly returned in to open court on April 10, 1934, the following verdict, to-wit:

(Verdict of the Jury set out on p. 670 of this Transcript of record was here repeated verbatim.)

Whereupon, said jury having been individually polled at the request of the defendant and each juror having stated in open court in answer to the clerk's query that such was his verdict, the same was by the court duly received and ordered filed, and the jury discharged;

[fol. 676] It is, Therefore, Ordered, Adjudged and Decreed by the Court that the order of the Railroad Commission of Texas bearing date June 13, 1933, providing for a Fifty-five (55¢) cent gas rate to domestic consumers within the City of Laredo, Texas, be, and the same is hereby in all things sustained as a valid and subsisting order, except as hereinafter provided;

And it appearing to the Court that the provision contained in said order of the Railroad Commission of Texas, reading:

"It is further ordered by the Railroad Commission of Texas that the Texas Border Gas Company shall refund to the City of Laredo, for the benefit of the domestic consumers, the difference between the amount collected by the Border Gas Company and the amount that would have been due by domestic consumers under this order",

is distinct and separable from the preceding and the remaining portions of the said order; and the Court being

of the opinion that so much of the said order of the Railroad Commission of Texas bearing date of June 13, 1933, as provides for making its rate effective Jan. 1st, 1932 and for a refund to the domestic or residential consumers of the City [fol. 677] of Laredo, Texas, for the difference between the amount of the fifty-five cent rate prescribed by said order and the existing seventy-five cent rate now being charged and collected by said defendant United Gas Public Service Company, is invalid,

It is Therefore, Ordered, Adjudged and Decreed by the court that to this extent said order be not sustained and of no force and effect; without prejudice, however, to the rights of the City of Laredo, Texas, to recover the difference between the fifty-five cent rate promulgated in said order of the Railroad Commission bearing date of June 13, 1933, and the existing seventy-five cent rate now being charged and collected by the defendant, United Gas Public Service Company, for the use and benefit of its citizens and/or the rights of such domestic and residential consumers of gas within said City of Laredo, Texas, to recover the said difference in rates, should this provision of said order as herein declared invalid be subsequently held to be valid and sustained, upon the final determination of this cause on any appeal hereof.

It is Further Ordered, Adjudged and Decreed by the Court that the defendant, United Gas Public Service Company, a corporation, be and it is hereby permanently and [fol. 678] perpetually enjoined and restrained from charging or collecting any rate, rates or charges for natural gas or natural gas service to domestic or residential consumers within the City of Laredo, Texas, in excess of the Fifty-five (55¢) cent rate prescribed and promulgated by the Railroad Commission of Texas in its order of June 13, 1933, aforesaid, unless subsequently changed or modified by an order of the said Railroad Commission of Texas or other duly constituted authorities; and, further, that the stay order entered by this court in this cause on the 26th day of July, A. D. 1933, be and the same is hereby dissolved and declared of no further force and effect; provided, however, that in the event of an appeal from this decree, if timely perfected, and the judgment herein is superseded by the filing of a supersedeas bond in the sum of Thirty Thousand Dollars ($30,000.00) by the defendant, and if the said appeal is prosecuted according to law by the said defendant, this

judgment and the permanent injunction herein granted shall be stayed during the period that the said appeal is pending and until the said appeal shall have been either abandoned or finally determined by a court of competent jurisdiction and of last resort.

[fol. 679] It is Further Ordered, Adjudged and Decreed by the Court that plaintiffs herein, The State of Texas et al., do have and recover of and from the defendant, United Gas Public Service Company, a corporation, all costs in this behalf expended; for all of which let execution issue;

to all of which action of the Court in sustaining said order of the Railroad Commission in part and any relief granted against it, the defendant, United Gas Public Service Company duly excepted; and to such action of the Court declaring said order invalid in part, and denying recovery for any refund as contended for by plaintiffs and in not rendering judgment in their behalf for the difference between the fifty-five cent rate promulgated in the order of said Railroad Commission and the existing rate now being charged and collected by said defendant, either from the date of January 1, 1932, or any other date subsequent to January 1, 1932, plaintiffs duly excepted.

C. A. Wheeler, Judge, Fifty-third Judicial District Court, Travis County, Texas.

(Notation of entry of judgment in the Court's Minutes omitted.)

[fol. 680] In District Court of Travis County

[Title omitted]

Defendant's Amended Motion for New Trial—Filed April 24, 1934

To the Honorable Judge of Said Court:

Comes now the defendant United Gas Public Service Company in the above-entitled and numbered cause and with leave of Court first had and obtained files this its Amended Motion for New Trial in lieu of its original motion for new trial heretofore filed herein on April 12, 1934, and moves the Court to set aside the verdict of the jury and

moves the Court to grant it a new trial herein and for cause says:

* * * * * * *

2

The Court erred in overruling the defendant's motion for peremptory instruction duly and properly submitted to the Court at the conclusion of all the evidence and prior to the submission of the case to the jury for the reason that considering the lowest valuation placed upon the defendant's property used and useful in serving the City of Laredo, and considering the lowest rate of return of 7% testified to and [fol. 681] in evidence, and considering only the lowest rate of annual depreciation testified to and in evidence, and considering the lowest revenues and operating expenses testified to and in evidence for the period January 1, 1932, the effective date of the Railroad Commission's rate-reduction order to December 31, 1933, the order of the Railroad Commission was clearly and satisfactorily shown to be unjust and unreasonable and the rates prescribed therein were shown to result in confiscation of defendant's property.

3

The Court erred in overruling the defendant's motion for peremptory instruction duly and properly submitted to the Court at the conclusion of all of the evidence and prior to the submission of any issue to the jury, for the reason that the opinion and order of the Railroad Commission on its face was shown to be so arbitrary and to be the result of the use of such arbitrary methods by the Railroad Commission, namely, the computation of revenues over the four-year period beginning June 30, 1928 through July 31, 1932, and the averaging of such revenues over such period as a basis for fixing rates, as to constitute a denial of due process and to result in depriving the defendant of its property without due process of law.

* * * * * * *

[fol. 682]

9

The Court erred in overruling defendant's motion for judgment non obstante verdicto duly and properly submitted to the Court for the reason that it would have been

proper for the Court to have directed a verdict in this case for the defendant and it would have been proper for the court to disregard the verdict of the jury and the answer of the jury to Special Issue No. 1, in that the answer of the jury to said issue had no support in the evidence, and in that by considering the evidence most favorable to the plaintiffs in this case, the order of the Railroad Commission is shown to have been unjust and unreasonable and also confiscatory, in consequence whereof the defendant was entitled to a judgment non obstante verdicto under and by virtue of Article 2211, as amended by the 42nd Legislature of the State of Texas.

* * * * * * *

13

The Court erred in overruling defendant's demurrer and exception to plaintiffs' petition, said demurrer and exception being contained in Defendant's First Amended Original Answer, paragraph A, subnumber 2, (a), which de- [fol. 683] murrer was duly and properly submitted to the Court.

* * * * * * *

15

The Court erred in overruling defendant's demurrer and exception to plaintiffs' petition, said demurrer and exception being contained in Defendant's First Amended Original Answer, paragraph A, subnumber 2, (c), which demurrer was duly and properly submitted to the Court.

* * * * * * *

26

The Court erred in his charge to the jury and in submitting the one question as to whether the order of the Railroad Commission was unjust and unreasonable over defendant's objection duly and timely made that such method of submission denied to the defendant a full, fair, and complete judicial review upon specific findings as to each disputed fact issue and evidence before the jury and denied to the defendant a full, fair, and complete hearing and determination of the separate and essential elements entering into the reasonableness and legality of the Commission's order and

entering into the effect of the enforcement of such order upon defendant's rights and combined in one question [fol. 684] the fundamental elements of net operating revenues, consisting of the difference between operating revenues and operating expenses, as well as the fundamental element of a reasonable rate of net annual return on the fair value of the defendant's property used and useful to furnish the service at the time the same is being furnished and used to furnish the service, as well as the proper annual rate of reserve accrual upon the depreciable items of defendant's said property necessary to preserve the integrity of the investment in and the value of such property and make good capital losses accruing from physical deterioration and cor-osion and all other causes of property retirement.

* * * * * * *

28

The Court erred in his charge to the jury submitted and made to the jury over defendant's objection duly and timely made that the said charge constituted an arbitrary and unlawful denial of defendant's right to a judicial determination of the reasonableness of the Commission's said order and the rates fixed therein upon the independent judgment of the jury as to the facts and upon the independent judgment of the Court as to the law and denied to the defendant a determination by the jury of each ultimate issue of fact as [fol. 685] to which the evidence is disputed with respect to present fair value, net operating revenues, rate of return, and rate of reserve accrual upon the federal question raised by the defendant's answer in this case, i. e., whether or not the effect of the enforcement of the Commission's order and the rates prescribed therein would take defendant's property and the use thereof without due process of law and deny to defendant the equal protection of the laws contrary to the Constitution of the United States, and because such charge denied to this defendant the right on this trial to reserve for review the determination of such ultimate fact issues separately and prevented the defendant from reserving for review by the appellate court the legality of the separate determinations of such ultimate fact issues and prevented this defendant from reserving for review the erroneous application of correct principles of rate making law to the facts found and from knowing and reserving for review by

the appellate court whether there had entered into the answer of the jury to the single question propounded to them findings made without evidence to support them, findings made contrary to the evidence, findings made upon mixed questions of law and fact and findings made upon the at-
[fol. 686] tempted application by the jury of inadmissible evidence admitted in evidence in the record year over the objection of the defendant.

* * * * * * *

50

The court erred in overruling defendant's objection to Special Issue No. 1, and in submitting said issue to the jury over defendant's objection duly and timely made, for the reason that it submitted in one question or issue the question of whether the order is unjust and unreasonable and permitted the jury to answer said Special Issue No. 1 "No" solely upon a finding with respect to whether or not the order is unjust and unreasonable without requiring the jury to find the facts upon which the Court might determine that the effect of the order of January 1, 1932, was and is to deny the defendant a reasonable net annual rate of return from such date, and prevented defendant from securing a determination of whether or not the effect of the order is to take the defendant's property without just compensation and deny defendant due process of law and equal protection of the law.

51

The Court erred in submitting to the jury Special Issue No. 1 over defendant's objection duly and timely made that the said issue is multifarious and duplicitous and submits
[fol. 687] the question whether the order is unjust and whether the order is unreasonable and submits the question of (1) fair value of the property used and useful in serving Laredo, (2) fair rate of return, (3) rate of depreciation, (4) question of revenues and expenses and net return, (5) the effect of the rate on future business, answer to each of which separate questions is necessary to an ultimate answer to said issue.

52

The Court erred in overruling defendant's objection to Special Issue No. 1 and in submitting said issue to the

jury over defendant's objection duly and timely made, for the reason that said issue submitted a question of law to the jury, the question of the reasonableness and justness of the order of the Commission being a question of law for the Court after a determination of the facts as to fair value, rate of return, rate of reserve accrual, and revenues and expenses for a proper test period.

* * * * * * *

59

The Court erred in overruling defendant's objection to the Court's charge and in submitting said charge to the jury over defendant's objection duly and timely made, for [fol. 688] the reason that under the charge as given the jury might find a lower amount for fair value than is supported by the evidence in the record; might find a lower rate for return, or for reserve accruals, or for operating expenses, than is supported by evidence in the records, and defendant would thereby be prevented from reserving for review on appeal such unlawful determination, and the charge as given therefore deprives defendant of its right to a full and fair hearing and trial in such a manner that it can know and reserve all points for review in the appellate court, and can preserve all points for review upon the federal questions involved by the Supreme Court of the United States.

* * * * * * *

73

The Court erred in refusing and failing to submit to the jury upon request of defendant duly and timely made, defendant's Specially Requested Issue No. 10, reading as follows:

"What do you find from the preponderance of the evidence in this case was the fair and reasonable value during the year 1933 of the physical operating properties and parts thereof of United Gas Public Service Company, exclusive of materials and supplies, cash working capital or working cash, and going value, used and useful in transport-[fol. 689] ing, distributing nd serving natural gas to the inhabitants of the City of Laredo? In answering this ques-

tion, please state such fair and reasonable value for the following portions of such properties:

(1) Distribution system property $—.
(2) Transmission system property $—.
(3) Gathering system property $—."

• • • • • • •

78

The Court erred in refusing and failing to submit to the jury upon request of defendant duly and timely made, defendant's specially requested issue No. 12, reading as follows:

"What do you find from the preponderance of the evidence in this case was the fair and reasonable value during the year 1932 of the physical operating properties and parts thereof of United Gas Public Service Company, exclusive of materials and supplies, cash working capital or working cash, and going value, used and useful in transporting, distributing and serving natural gas to the inhabitants of the City of Laredo? In answering this question, please state such fair and reasonable value for the following portions of such properties:

(1) Distribution system property $—;
[fol. 690] (2) Transmission system property $—;
(3) Gathering system property $—.

• • • • • • •

82-114

(Of this series of paragraphs, the paragraphs first designated below each commence as follows:

"The Court erred in refusing and failing to submit to the jury upon request by defendant duly and timely made, defendant's Specially Requested Issue No. (here the number of the issue is shown), reading as follows:"

Then there is copied in each of the following numbered paragraphs of this motion the special issue numbered as set out below, which special issues have already been included once in this transcript.

Paragraph of Motion	Number of Special Issue	Page of Transcript Where the Issue Appears
82	14	...
84	15	...
86	16	...
88	17	...
90	18	...
92	19	...
101	24	...
103	25	...
109	28	...
113	30	...

[fol. 691] The next paragraph following each such paragraph assigns error in the failure of the Court to submit to the jury for its determination the question of fact pointed out to the Court in the issue quoted in the paragraph next preceding. Certificate in this manner, rather than a complete copy of each such paragraph, was made at the request of counsel for appellant.)

• • • • • • •

227

The Court erred in rendering judgment in favor of the plaintiffs and against the defendant in that under the testimony most favorable to the plaintiffs herein and considering only the lowest valuation, lowest rate of return, lowest rate of depreciation, lowest amount of operating expenses, lowest amount of revenues for the years 1932 and 1933, the rate fixed by the Railroad Commission is shown to be confiscatory of the defendant's property and to be unjust and unreasonable to it.

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234

The Court erred in rendering judgment herein permanently and perpetually enjoining and restraining the Defendant from charging or collecting any rates for natural gas and natural gas service to domestic or residential con-
[fol. 692] sumers in Laredo in excess of the fifty-five cent ($.55) rate prescribed and promulgated by the Railroad

Commission, for the reason that, considering only the testimony most favorable to the Plaintiffs and considering the lowest valuation placed on Defendant's property used and useful in serving Laredo, and the lowest rate of return of 7% testified to and in evidence, and the lowest rate of annual depreciation testified to and in evidence, and the lowest revenues and operating expenses testified to and in evidence for the period January 1st, 1932, the effective date of the Railroad Commission's order, to December 31st, 1933, the Order of the Commission was clearly shown to be unjust and unreasonable and the rates prescribed therein were shown to result and will result in confiscation of Defendant's property.

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The Court erred in rendering judgment sustaining any part of the Order of the Railroad Commission in that the Order and Opinion of the Commission on its face shows that the Commission used such arbitrary methods in reaching its conclusions and in the use of revenues and operating statements for periods of time which form no basis or criterion for the fixing of rates as of the time of the hearing and as of the time of the entry of the Commission's [fol. 693] Order, that it deprives Defendant of its property without due process of law and denies Defendant equal protection of the law, and in that considering only the testimony most favorable to the Plaintiffs, that is the lowest valuations, the lowest rate of return, the lowest rate of depreciation and the lowest revenues and operating expenses for a proper test period, the Order of the Commission is shown by clear and satisfactory evidence to be unjust and unreasonable and confiscatory of Defendant's property.

Wherefore, premises considered, defendant respectfully moves the Court for each and all of the above and foregoing reasons and errors pointed out to the Court that the verdict of the jury be set aside and that the judgment of the Court be set aside and that this defendant be granted a new trial herein.

(Signature of counsel omitted.)

[File endorsement omitted.]

[fol. 694] In District Court of Travis County

[Title omitted]

Order Overruling Defendant's Amended Motion for New Trial—Filed April 24, 1934

It is, Therefore, Ordered, Adjudged, and Decreed by the Court that the Amended Motion for New Trial of the defendant United Gas Public Service Company be and the same is hereby in all things overruled, to which action of the Court defendant then and there in open court excepted.

At the same time and on the 24th day of April, 1934, the defendant United Gas Public Service Company in open Court then and there gave notice of appeal to the Court of Civil Appeals for the Third Supreme Judicial District of Texas at Austin.

C. A. Wheeler, Judge.

[fol. 695] In Court of Civil Appeals for the Third Supreme Judicial District of Texas

No. 8176

United Gas Public Service Company, Appellant,

v.

State of Texas et al., Appellees

Appeal from the 53rd District Court, Travis County, in No. 52774

Docket Entries

(Certain docket entries omitted)

6-21-34. Transcript and statement of facts received and filed.
3-14-35. Submitted and argued.
10-30-35. Judgment below reformed and affirmed.
11-14-35. Appellant's motion for rehearing received and filed.
1- 8-36. Appellant's motion for rehearing submitted and overruled.

DOCKET ENTRIES—Continued

2- 7-36. Petition for writ of error received and filed.
2- 8-36. Record, all papers and certified copies (of judgment and orders) sent to the Supreme Court of Texas.
10- 7-36. Writ of error refused.

[fol. 696]

12-30-36. Motion for rehearing overruled and record returned by the Supreme Court.
1 -7-37. Order of Chief Justice, C. C. A. denying petition for appeal to U. S. Supreme Court.
1-20-37. Petition for appeal to U. S. Sup. Ct., statement as to jurisdiction, citation, order allowing appeal, notice and acknowledgment of service on 1-19-37 by Asst. Attorney Gen'l. received and filed.
1-22-37. Cost bond filed, acknowledgment of service on 1-19-37 by E. H. Lange, Laredo, received and filed.
2- 1-37. Appellant's præcipe for transcript received and filed.
2- 1-37. Appellees' acknowledgment of service of præcipes to clerks C. C. A. and Sup. Ct. of Texas received and filed.
2- 4-37. Notice received from appellant's counsel that appellees' time for filing motion to dismiss or affirm had expired.
3- 2-37. Appellees' counter præcipe for transcript and acknowledgment of service thereof received and filed

[fol. 697]

3- 5-37. Transcript of record certified and delivered to counsel for appellant.

[fol. 698] IN COURT OF CIVIL APPEALS, THIRD JUDICIAL DISTRICT

No. 8176

[Title omitted]

APPELLANT'S ASSIGNMENTS OF ERROR—In Brief Filed November 22, 1934

No. 1

The court erred in denying appellant's motion for peremptory instruction when timely made at the conclusion of all testimony, and in entering judgment for appellees, because the evidence in the record most favorable to appellees showed, as a matter of law, that the existing $0.75 rate had not yielded a net return of 7 per cent per annum from January 1, 1932, down to the date of the trial, and that therefore the action of the Commission in prescribing and in seeking to impose and enforce the lower $0.55 rate in Laredo was beyond the power of the Commission.

No. 2

The court erred in overruling appellant's said motion for peremptory instruction, and in entering judgment for [fol. 699] appellees, because the undisputed evidence in the record showed that the $0.55 rate prescribed in the Commission's said order of June 13, 1933, was fixed upon the assumption that the appellant's revenues in Laredo from and after January 1, 1932, would be equal to the average of its said revenues for the period which commenced July 1, 1928, and which ended July 31, 1932, and that such assumption was contrary to the facts, and erroneous, and hence said $0.55 rate could not be enforced, because unlawfully made.

No. 3

The court erred in overruling appellant's said motion for peremptory instruction, and in entering judgment for appellees, because the evidence in the record most favorable to appellees showed, as a matter of law, that from January 1, 1932, to the date of the suit and trial, the enforcement of the Commission's said order and the imposition of the $0.55 rate prescribed therein would compel

appellant to serve gas in Laredo at rates not sufficient to yield a reasonable return on the fair value of appellant's property, and would deny appellant the equal protection of the laws and deprive appellant of its property without [fol. 700] due process of law and without due course of the law of the land, and hence said order and rate were unenforceable, because unjust, unreasonable and confiscatory.

No. 4

The court erred in overruling appellant's motion for judgment non obstante veredicto, and in refusing to enter judgment for appellant, because the evidence in the record most favorable to appellees showed, as a matter of law, that the existing $0.75 rate had not yielded a net return of 7 per cent per annum from January 1, 1932, down to the date of the trial, and that therefore the action of the Commission in seeking to impose and enforce the lower $0.55 rate in Laredo was beyond the power of the Commission.

No. 5

The court erred in overruling appellant's motion for judgment non obstante veredicto, and in refusing to enter judgment for appellant, because the undisputed evidence in the record showed that the $0.55 rate prescribed in Commission's said order of June 13, 1933, was fixed upon the assumption that appellant's revenues in Laredo from and after January 1, 1932, would be equal to the average of its [fol. 701] said revenues for the period which commenced July 1, 1928, and which ended July 31, 1932, and that such assumption was contrary to the facts, and erroneous, and hence said $0.55 rate could not be enforced because unlawfully made.

No. 6

The court erred in overruling said appellant's motion for judgment non obstante veredicto, and in refusing to enter judgment for appellant, because the evidence in the record most favorable to appellees showed, as a matter of law, that the enforcement of the Commission's said order and the imposition of said $0.55 rate prescribed therein would compel appellant to serve gas in Laredo, from January 1, 1932, down to the date of the suit and trial, at rates not sufficient to yield a reasonable return on the fair value of ap-

pellant's property and would deny appellant the equal protection of the laws and deprive appellant of its property without due process of law and without due course of the law of the land, and hence such order and rate were unenforceable because unjust, unreasonable, and confiscatory.

[fol. 702]

No. 7

The court erred in entering judgment upon the verdict of the jury herein, because said verdict is without support in the evidence, and is contrary to the great and overwhelming weight of the evidence, in that the evidence in the record most favorable to appellees showed, as a matter of law, that the enforcement of the $0.55 rate prescribed in the Commission's said order would result in confiscation of appellant's property from the effective date of such order down to the date of the suit and trial.

No. 8

The court erred in entering judgment upon the verdict of the jury herein, because the verdict of the jury could not control the court in applying the law to the facts and declaring the result, and because the evidence in the record most favorable to appellees showed, as a matter of law, that at the date of the trial and since January 1, 1932, the existing $0.75 rate in Laredo did not yield a reasonable return on fair value, and hence there was no evidence to support the verdict and the judgment of the court based thereon.

[fol. 703]

No. 9

The court erred in entering its judgment dated April 24, 1934, decreeing that the Commission's said order valid and permanently enjoining appellant from thereafter charging rates in excess of the $0.55 rate prescribed therein, because the evidence in the record most favorable to appellees showed, as a matter of law, that the effect of enforcing said rate at the date of the trial and from January 1, 1932, would be confiscation of appellant's property, and the court's judgment seeking to prescribe and impose such $0.55 rate from the date of the decree until changed by the Commission or City was beyond the judicial power of the Court.

No. 10

The court erred in entering its judgment dated April 24, 1934, decreeing the Commission's said order valid and permanently enjoining appellant from thereafter charging rates in Laredo in excess of the $0.55 rate prescribed therein, because the undisputed evidence in the record showed that said $0.55 rate was unlawfully made upon the [fol. 704] erroneous assumption that appellant's revenues in Laredo from and after January 1, 1932, would be equal to the average of such revenues for the period which commenced July 1, 1928, and which ended July 31, 1932, and hence the judgment of the court seeking to impose and enforce such rate from the date of the decree was unsupported by evidence and beyond the judicial power of the court.

No. 11

The Texas statutes make submission to the jury upon special issues mandatory if requested by either party to a jury trial, and it was error for the lower court to deny appellant's seasonable request for submission on special issues.

No. 12

Request for submission on special issues having been made, the court erred in submitting the case to the jury on definition of terms and Special Issue No. 1 as follows:

"Special Issue No. 1: Do you find that the order of the Railroad Commission of Texas bearing date June 13, 1933, providing for a fifty-five cent gas rate to residential consumers within the city of Laredo, Texas, under the facts [fol. 705] introduced in evidence before you, is unreasonable and unjust as to defendant, United Gas Public Service Company. Answer this question 'yes' or 'no'." (Tr. p. 206.)

because the charge did not constitute submission of the case to the jury upon the special issues, as made by the pleadings and proof, in compliance with the Texas statutes.

No. 13

The court erred in giving the charge to the jury over appellant's objection thereto made upon the ground that

such charge, and particularly Special Issue No. 1 thereof, was multifarious.

No. 14

The court erred in giving the charge to the jury and in overruling appellant's objection thereto made upon the ground that Special Issue No. 1 thereof submitted to the jury a question of law for determination.

* * * * * * *

No. 18

The court erred in submitting the case to the jury upon the charge given, over appellant's objection thereto seasonably made, upon the ground that submission in this manner denied appellant a trial in accordance with due process of [fol. 706] law upon appellant's defenses of confiscation under the Federal Constitution.

No. 19

The Court erred in submitting the case to the jury upon the charge given over appellant's objection thereto seasonably made that upon the record in such case, appellant was thereby deprived of the opportunity of knowing the grounds for the jury's verdict and for any judgment of the court based thereon, and was prevented from reserving for review in the courts of appeal, State and Federal questions as to the existence and sufficiency of evidence to support the verdict and judgment.

No. 20

The court erred in submitting the case to the jury upon the charge given and in rendering judgment on the verdict of the jury finding that the Commission's order was not unjust and unreasonable to appellant, because such action constituted an attempted delegation to a petit jury of the right and power to determine as a matter of law whether such order was repugnant to the Federal Constitution, which is a n n-delegable duty of the court, and such verdict and judgment are, therefore, void.

* * * * * * *

[fol. 707] No. 29

The court erred in failing and refusing to submit to the jury, when seasonably requested by appellant, appellant's specially requested issue No. 10 (Tr. p. 134), asking the jury to answer what was the fair value of the physical operating properties of appellant used and useful to serve Laredo in 1933, and in refusing to give, in connection therewith, the definition contained in appellant's specially requested issue No. 9. (Tr. p. 132.)

No. 30

The court erred in refusing to submit to the jury the questions of fact suggested and pointed out to the court in appellant's specially requested issues Nos. 9 and 10.

No. 31

The court erred in refusing to submit to the jury appellant's specially requested issue No. 12 (Tr. p. 138), asking the jury to state what was the fair value of appellant's physical operating properties used and useful in 1932 to serve the City of Laredo.

No. 32

The court erred in refusing to submit to the jury the question of fact suggested and pointed out to the court in [fol. 708] appellant's specially requested issue No. 12.

No. 33

The court erred in failing and refusing to submit to the jury the appellant's specially requested issues Nos. 14, 15, 16 and 17 (Tr. pp. 142, 144, 146, 148), asking the jury to determine reasonable amounts for materials and supplies, cash working capital and going value for appellant's said physical operating properties during the year 1933.

No. 34

The court erred in refusing and failing to submit the questions of fact suggested and pointed out to the court in appellant's specially requested issues Nos. 14, 15, 16 and 17.

No. 35

The court erred in failing and refusing to submit to the jury appellant's specially requested issue No. 19 (Tr. p. 152), asking the jury to determine the reasonable cost to appellant of the gas at well mouth which appellant served to Laredo.

No. 36

The court erred in failing and refusing to submit to the jury the question of fact suggested and pointed out to the [fol. 709] court in appellant's specially requested issue No. 19.

* * * * * * *

No. 41

The court erred in failing and refusing to submit to the jury appellant's specially requested issue No. 24, and appellants' specially requested issue No. 23, requested in connection therewith (Tr. pp. 160, 162), defining annual depreciation rate, and requesting the jury to answer whether 3 per cent of $885,000 was a fair and reasonable annual depreciation rate for appellant's said depreciable property.

No. 42

The court erred in failing and refusing to submit to the jury the question of fact suggested and pointed out in appellant's specially requested issue No. 24, and a proper definition of annual depreciation rates.

No. 43

The court erred in failing and refusing to submit to the jury appellant's specially requested issues Nos. 25 and 26 (Tr. pp. 164, 166), asking the jury to answer what percentage of reproduction cost new of depreciable items of [fol. 710] distribution system property should be set aside as an annual reserve accrual in 1932 and 1933.

No. 44

The court erred in failing and refusing to submit to the jury the questions of fact suggested and pointed out in appellant's specially requested issues Nos. 25 and 26.

* * * * * * *

No. 47

Similarly, the court erred in failing and refusing to submit to the jury appellant's specially requested issues Nos. 28, 29, 30 and 31 (Tr. pp. 170, 172, 174, 176), requesting the jury to determine the percentages of reproduction cost new of the depreciable items of the transmission and gathering system properties required to constitute a reasonable annual reserve accrual and the reproduction cost new of depreciable items of said transmission system and gathering system properties.

No. 48

The court erred in failing and refusing to submit to the jury the questions of fact suggested and pointed out in [fol. 711] appellant's specially requested issues Nos. 28, 29, 30 and 31.

[File endorsement omitted.]

[fol. 712] In Court of Civil Appeals of Texas

No. 8176

United Gas Public Service Company, Appellant,

vs.

The State of Texas et al., Appellees

Appeal from District Court of Travis County

Opinion—Filed October 30, 1935

In February, 1909, the City of Laredo granted certain individuals a 25-year franchise to construct and operate a natural gas distribution system in said city. The franchise and all rights thereunder were acquired by appellant through the mesne conveyances of several predecessors. The ordinance and some of the orders and proceedings here involved occurred before appellant acquired the franchise; but it is bound by them, and will be considered as having owned and operated the franchise at all times.

From the year 1921 to December, 1931, the natural gas rate for domestic use in Laredo was 75¢ per M. C. F., with

10% discount if bill was paid within 10 days from date, and with a minimum monthly bill of $1.00 per customer. On December 15, 1931, the City of Laredo, a Home Rule chartered city, acting under the authority given by Art. [fol. 713] 1175, R. S. 1925, by ordinance fixed the natural gas rate for domestic use at 40¢ per M. C. F., with 10% discount if bill was paid in 10 days, and with a minimum monthly bill of $1.00 per customer, the ordinance providing that the rate would be effective from January 1, 1932. An appeal under Art. 6058, R. S. 1925, was perfected from the ordinance to the Railroad Commission. Appellant filed a bond in the sum of $20,000.00, conditioned that it would refund any excess rates over the rates finally determined to be fair and reasonable. Pending said appeal appellant filed an application for an increase of the 75¢ domestic rate, which was not acted upon by the City of Laredo because of the pendency of the matter before the Commission; and thereafter appellant perfected an appeal, based on this application, to the Commission, filing a bond conditioned as the one in the first appeal. The Commission consolidated the two appeals, heard them on their merits, and on June 13, 1933, promulgated its order fixing the natural gas rate for domestic use at 55¢ per M. C. F., with minimum monthly bill of $1.00 per customer. The order provided for a 10% penalty if bill was not paid within 10 days from date; provided that the 55¢ rate would be effective from January 1, 1932; and further provided that appellant refund to the [fol. 714] customers the difference in the amount collected after January 1, 1932, under the 75¢ rate and the 55¢ rate, appellant having continuously collected the 75¢ rate.

On June 29, 1933, appellant filed its bill in equity in the Federal District Court, naming the members of the Railroad Commission, the Governor, the Attorney General, and the City of Laredo and its governing officials as defendants, seeking to restrain them from enforcing the 55¢ rate pending a hearing of the matter by a statutory federal court of three judges; alleging that because the 55¢ rate would not afford appellant a reasonable return on the fair value of its property used in the public service, the rate order was confiscatory, and in violation of the just compensation, the equal protection, and the due process clauses of the Federal Constitution.

On July 26, 1933, appellees, the parties named as de-defendants in appellant's suit in the Federal Court, filed

this suit in the District Court of Travis County, alleging that appellant had filed its aforementioned bill in equity in the Federal Court, and that appellees brought this suit in the nature of an appeal under the terms of Art. 6059, R. S. 1925; but that "such appeal is not taken because plaintiffs [fol. 715] (appellees) are dissatisfied with the rates and charges prescribed in the Commission's said order, but primarily for the purpose of protecting the jurisdiction of the court and its venue to hear and finally determine the matters in controversy, and to enforce the said order, if it should be deemed to be valid upon final hearing," which order appellant was alleged to have continuously violated since its promulgation; and prayer was that appellant be enjoined from charging or collecting any rates for natural gas in excess of the 55¢ rate fixed by the Commission, and that the City of Laredo recover for the consumers the difference in the amount collected under the 75¢ rate and the 55¢ rate. Appellees also requested that pending the final determination of the cause, an order be entered staying all proceedings by the Commission or City of Laredo in the collection of the 55¢ rate; which order was entered by the State District Court on the date the petition was filed.

On August 1, 1923, appellant and appellees appeared before the statutory three-judge Federal Court, and appellees' motion to stay all proceedings in that cause until final disposition of the Travis County District Court cause was granted; the statutory Federal Court also enjoined the [fol. 716] enforcement of the 55¢ rate, "pending the final disposition of the cause" in the State District Court. On the date of this stay order by the three-judge court, appellant filed its petition in the Federal District Court, praying for the removal of the cause from the State to the Federal Court. Appellees answered with a motion to remand the cause to the State Court; which motion was granted.

In the State Court appellant filed an answer, attacking the 55¢ rate, alleging that the rate order was based on assumption contrary to the facts with regard to the average annual revenues of appellant, and was therefore not supported by any evidence; and that because the 55¢ rate did not yield a net return of 7% per annum from January 1, 1932, down to the date of the trial (in April, 1934), and would not yield a reasonable return on the fair value of the property used in the public service, the rate order was

therefore unjust and unreasonable and confiscatory, and in violation of the just compensation, the equal protection, and the due process clauses of both the State and Federal Constitutions; and prayer was that the appellees be restrained from enforcing the alleged void order.

Under the pleadings and proceedings, the suit filed by [fol. 717] appellees in the District Court of Travis County was merely one to bring appellant within the jurisdiction of the State Court as provided for by Sec. 266 of the Judicial Code of the United States (28 U. S. C. A., Secs. 368 et seq.), in order to determine the validity of the 55¢ rate; and the amended answer of appellant therein, seeking to enjoin the enforcement of the 55¢ rate, was in effect an appeal by it under Art. 6059, to determine whether the rate order was unjust and unreasonable as to appellant; and to determine the additional question of whether the enforcement of the rate would result in confiscation of appellant's property used in the public service, rendering the rate order unconstitutional. Upon the issues thus joined in the State Court a trial was had to a jury. The court's charge consisted of definitions and instructions, and the following special issue:

"Do you find that the order of the Railroad Commission of Texas bearing date June 13, 1933, providing for a $0.55 gas rate to residential consumers within the City of Laredo, Texas, under the facts introduced in evidence before you, is unreasonable and unjust to defendant United Gas Public Service Company? Answer this question 'Yes' or 'No'."

The jury answered the issue "No". Accordingly, the judgment enjoined appellant from charging rates in Laredo in excess of the 55¢ rate fixed by the Commission, until [fol. 718] changed by the Commission or other authorized authority; dissolved the stay order of June 26, 1933; and provided for a suspension of the judgment upon the perfecting of an appeal and the filing of a supersedeas bond in the sum of $30,000. The judgment declared the Commission's order fixing the 55¢ rate to be valid, except that portion making the 55¢ rate effective from January 1, 1932, and for a refund of the difference between the 75¢ rate and the 55¢ rate, but without prejudice to any rights for the collection of such difference in rates should the 55¢

rate be held valid on appeal. Appellant has appealed from the portion of the judgment enjoining it from charging in excess of the 55¢ rate, and has filed a supersedeas bond. Appellees have appealed from the portion of the judgment denying a recovery of refunds.

Appellant briefs the appeal in two parts. In "Part I." and by propositions 1 to 10, appellant seeks to have the judgment below reversed and judgment rendered for it. In "Part II." of the brief and by propositions 11 to 79, appellant contends that the judgment should be reversed and the cause remanded, because of several alleged errors of practice.

We have reached the conclusion that appellant not only failed to establish its claim for reversal and rendition of [fol. 719] judgment in its favor, but that when viewed in the light of the presumption in favor of the validity of the Commission's rate order, and of the quantum and character of proof required to overcome such presumption, the evidence adduced was insufficient, as a matter of law, to show that the 55¢ rate order was either unjust and unreasonable or confiscatory. In view of this conclusion, all questions of practice presented in "Part II." of the brief go out of the case.

The Commission found in its rate order that the fair value of appellant's property used in the public service as of August 1, 1932, was $885,000; that a 3% annual reserve accrual for depreciation on such valuation was fair and reasonable; and that a 7% annual return on such valuation of the property was fair and reasonable; and that a gas rate of 55¢ for domestic use was fair and reasonable. However, the Commission reluctantly included in the property valuation an item of $124,688, representing the Pascadito-Jennings Transmission pipe line of approximately 26 miles, which was only used one day during the last 12 months of the operating period, and which the Commission found could "neither be safely nor profitably used in transporting gas" to Laredo. The Commission also included the West Jennings Gathering System at a [fol. 720] value of $10,342, although it found that these "two property items are neither used nor are they necessary as standby equipment." There was also evidence before both the trial court and the Commission, which tended to show the fair value of appellant's property to be about

$700,000; and that a 2% annual accrual for depreciation would be fair and reasonable. Appellant's witnesses placed its value at slightly over one million dollars. When the properties serving Laredo were transferred to appellant by its subsidiary and predecessor in title, Texas Border Gas Company, on October 31, 1932, the journal entry on appellant's books reflected a total value of $934,798.02, with a reserve for depreciation of $78,632.20, which included the Roma-Jennings pipe line not servicing Laredo, and which with other property was valued on the books of appellant's predecessor in title in 1929, at $848,232.98. The separate value of the Roma-Jennings pipe line was not shown; but based upon these book entries and other facts, the expert witness for appellees arrived at his $698,047 present valuation of appellant's property used in servicing gas in Laredo.

On the hearing before the Commission the operating revenues and operating expenses for slightly more than the four fiscal years next preceding the hearing were used. [fol. 721] This operating period extended from June 30, 1928, through July 31, 1932, the four fiscal years being the three twelve-months periods ending, respectively, June 30, 1929, 1930, and 1931, and the twelve-month period ending July 31, 1932. The reasons stated by the Commission in the rate order for using said operating periods and employing the method used are, as follows:

"The Company presented a 'set up' of operating revenues and expenses for the 12 months period ending July 31, 1932, only, for consideration in the computation of a fair return upon its plant value. On the other hand, the City presented a similar 'set up' covering the years ending June 30, 1929, 1930 and 1931, and for the year ending July 31, 1932, a period of four years, it contended that since the year ending July 31, 1932, was patently a subnormal business year, such single year should not be taken alone as the test period for the computation necessary. It is our opinion that the one year ending July 31, 1932, should not be taken as the test period. It is a matter of common knowledge, we believe, that from a general business standpoint, the year 1932 was the worst year since 1929. The City's Exhibit L shows that the fiscal year 1931, in comparison with the years immediately preceding it, was subnormal also; therefore, the year 1931 should not be taken

as the test period, nor should an average of these two years be taken.

"Just as it would be unfair to the City to take 1932, or 1931, alone, or an average of both, as the test period, it would be unfair to the Company to take the year 1930, or even an average of the three years 1930, 1931 and 1932, as the test period, as it is shown that the year 1930 was the best year, in point of gross revenues, that the Company had experienced since 1928.

[fol. 722] "The year 1929, while it was a better year than 1931 in point of gross revenue by $27,168, was a leaner year than 1930 by $38,153; its inclusion in the test period tends to equalize the effect of the inclusion of the better year, 1930.

"Therefore, in the light of ample lawful precedent for the taking of an average of four successive years immediately preceding the date of the investigation, as the test period, and because in so doing we believe that justice is done to both parties, we are of the opinion and hold that an average of revenues and expenses for the four fiscal years 1929, 1930, 1931 and 1932, constitutes the test period for the computation of the rate structure upon which a fair return is to be predicated."

The gross revenues and their sources for the four fiscal years as obtained from appellant's calculations were, as follows:

"12 Months Ended	Central Pow. & Lt. Co. & Motor Fuel Products Co.	Other Sources	Total
June, 1929	$68,188.69	$222,516.93	$290,705.62
June, 1930	91,603.56	237,989.24	329,592.80
June, 1931	56,415.13	206,577.17	262,992.30
July, 1932	15,398.30	179,126.27	194,524.57"

The total operating revenues, operating expenses and net revenues as obtained from appellant's calculations for the four fiscal years were, as follows:

[fol. 723]

	"Year ended June 30, 1929	June 30, 1930	June 30, 1931	July 31, 1932
Op. Revenue ...	$290,705.62	$329,592.80	$262,992.30	$194,458.09
Op. Expenses ..	$141,253.38	$167,261.38	$133,644.64	$114,149.62
Net Revenue ..	$149,452.24	$162,331.42	$129,347.66	$80,308.47"

The gross revenues and their sources for the additional operating period used in the trial court on appeal were, as follows:

"12 Mos. Ended	Revenues from Central Power & Lt. Co. and Motor Fuel Prod. Co.	Other Revenues	Total
Dec. 31, 1932.....	$8,790.20	$174,987.21	$183,777.41
Dec. 31, 1933.....	54.40	158,699.24	158,753.64"

The decrease in industrial revenues was because the Motor Fuel Products Company had ceased to do business, due to large operating losses; and because the Central Power & Light Company had completed and put in operation in Laredo its main transmission line from its central operating plant at another point, the Laredo plant, which appellant served with gas for fuel, had become a mere emergency or standby plant, and will not hereafter be used except for short periods during emergencies.

[fol. 724] Based upon the aforementioned evidence, an expert accountant employed by the appellees, after deducting the nonrecurring industrial revenues and certain questioned items of expenses, computed the net returns for each of the (5) twelve-month operating periods, ending June 30, 1929, 1930, 1931, July 31, 1932, and December 31, 1933, respectively, and averaged the annual net operating revenues available for the five years, as follows:

[fol. 725]

	12 Mo. Period Ending June 30, 1929	12 Mo. Period Ending June 30, 1930	12 Mo. Period Ending June 30, 1931	12 Mo. Period Ending July 31, 1932	12 Mo. Period Ending Dec. 31, 1933
Gross Operating Revenues	$290,705.62	$329,592.80	$262,992.30	$194,458.09	$158,822.62
(S.F. Vol. III, p. 1786.) Less Non-Recurring Revenues	68,188.69	91,603.56	56,415.13	15,398.30	54.40
(S.F. Vol. IV, p. 2115.) Total Recurring Revenue	$222,516.93	$237,989.24	$206,577.17	$179,059.79	$158,768.22
(S.F. Vol. II, p. 1083-84.) Gross Operating Expenses	$141,253.38	$167,261.38	$133,644.64	$114,149.62	$93,298.46
(S.F. Vol. III, p. 1786.) Less Non-recurring Gas Purchases	22,885.04	29,529.98	21,274.18	4,176.46	.....
(S.F. Vol. II, p. 1083-84.)	$118,368.34	$137,731.40	$112,370.46	$109,973.16	$93,298.46
Less Questioned Items of Operating Expenses (S.F. Vol. III, p. 1795.)	9,663.33	16,541.54	20,198.69	27,347.05	.....
Total Net Operating Expenses	$108,705.01	$121,189.86	$92,171.77	$82,626.11	$93,298.46

[fol. 726]

Recapitulation

Total Net Recurring Revenue	$222,516.93	$237,989.24	$206,577.17	$179,059.79	$158,768.22
Less: Total Net Operating Expenses	108,705.01	121,189.86	92,171.77	82,626.11	93,298.46
Net Available Return	$113,811.92	$116,799.38	$114,405.40	$96,433.68	$65,469.76

Average Annual Net operating revenue for the five 12 months' periods $101,384.02

Average Annual Net operating revenue for the four 12 months' periods, which 4 periods were presented in evidence before the R. R. Commission (June 30, 1928, to July 31, 1932) $110,362.59

Average Annual Net operating revenue for the Three 12 months' periods ending June 30, 1931, July 31, 1932, and Dec. 31, 1933 ..... $92,102.94

Average Annual Net operating revenue for the Two 12 months' periods ending July 31, 1932, and Dec. 31, 1933 ..... $80,951.72

In applying the several average annual net operating revenues appearing on the preceding page, the following average Annual Rates of Return are found:

1. Average net operating revenue for the Five 12 months' periods		$101,384.02
Less annual depreciation @ 3% on $885,000.00		26,550.00
Amount available for return at existing rates		$74,834.02
Average Annual Rate of Return, i.e., $885,000 divided into $74,834.02, equals	8.46%	

[fol. 727]

2. Average net operating revenue for the Four 12 months' periods, which 4 periods were presented in evidence before the Railroad Commission (June 30, 1928 to July 31, 1932)		$110,362.59
Less annual depreciation @ 3% on $885,000.00		26,550.00
Amount available for return at existing rates		$83,812.59
Average Annual Rate of Return, i. e. $885,000 divided into $83,812.59, equals	9.47%	
3. Average operating revenue for the Three 12 months' periods ending June 30, 1931, July 31, 1932, and Dec. 31, 1933		$92,102.94
Less 3% annual depreciation (S.F. Vol. III, p. 1745)		26,550.00
Amount available for return at existing rates		$65,552.94
Average Annual Rate of Return, i. e. $749,990 (Tr. pp. 25, and 36) divided into $65,552.94, equals	8.74%	
Average Annual Rate of Return, i. e. $885,000 divided into $65,552.94, equals	7.41%	
4. Average operating revenue for the Two 12 months' periods ending July 31, 1932 and Dec. 31, 1933		$80,951.72
Less 3% annual depreciation (S.F. Vol. II, p. 1430)		25,000.00
Amount available for return at existing rates		$55,951.72
Average Annual Rate of Return, i. e. $700,000 divided into $55,951.72, equals	7.99%	
Average Annual Rate of Return, if the items of $124,668 and $10,342 (Total $135,010) which were considered by the Commission as neither used and useful, nor necessary (Tr. pp. 25 and 36) are deducted from the rate base of $885,000: $749,990 divided into $55,951.72, equals	7.46%	

[fol. 728] Appellees offered evidence tending to show that if the 55¢ rate had been actually put into effect, it would have produced approximately 1500 additional meters, at $1.00 per month minimum, and would have increased the use of gas by present consumers. Appellant's evidence tended to show that any such increase in revenues because of the lower rate was speculative. Appellant has continuously charged and collected the 75¢ rate.

The exact calculations on which the Commission computed the 55¢ rate do not appear in its rate order, nor in the record on appeal. But appellant insists that it appears from the opinion that the Commission found the fair value of the property to be $885,000, its annual depreciation to be 3%, and 7% to be a reasonable annual return thereon, and applied such findings to the average net revenues received by appellant in the four fiscal years used in the hearing. Appellant contends that "the practical result of using this device was to greatly overstate the net revenues actually being received from existing rates at the date of inquiry, to assume that revenues which had stopped coming in were still being collected, and to apply revenues received during an era of good business, rapid growth and a higher level of prices of construction labor and material [fol. 729] to a rate base determined at depression prices, and to test requirements for return at the percentage therefor fixed in consideration of depressed business conditions." And by propositions 1 to 10, appellant in one way or another, contends that the evidence showed, as a matter of law, that the 55¢ rate order was confiscatory, and per se unjust and unreasonable, on two grounds, as follows:

1. That because the existing 75¢ rate did not yield a 7% return on the $885,000 valuation of the property from January 1, 1932, the effective date of the city ordinance, to December 31, 1933, or down to the date of the trial in April, 1934, the lower 55¢ rate would necessarily not yield a reasonable return on appellant's property.

2. That in making its calculations for the 55¢ rate the Commission assumed that appellant's revenues from January 1, 1932, would equal its revenues for the period beginning June 30, 1928, and ending July 31, 1932, which assumption was contrary to the facts, because it was assumed that the revenues from the two industrial sources which had

stopped coming in were still being collected, and because of existing depression conditions, revenues had decreased, and for which reasons the 55¢ rate would not afford a reasonable return on the fair value of appellant's property.

[fol. 730] The contention that the rate order is unenforceable because the existing 75¢ rate did not yield a 7% return on the $885,000 property valuation from January 1, 1932, to December 31, 1933, the lower 55¢ rate would necessarily not afford a reasonable return, is not sustained. The year ending December 31, 1933, was the last fiscal year of the five-year period of business operations used in the trial court. It was admittedly an abnormal year, because of high temperature prevailing during the winter months; and because of a decrease in the purchasing power of consumers, due to the business depression prevailing everywhere. The rule is settled that rates are not based upon the results of business of any one year alone, but upon what is estimated as being the average business over a period of years; the future being gauged as nearly as possible by the past experience. The reason for the rule is the fact that any business may fluctuate from year to year because of changing conditions or circumstances which may affect it; ordinarily, a test of five years or more next preceding the inquiry, if available, is selected. It is also the rule that only actual experience under the rate complained of can furnish any real criterion or guide as to the effect of the rate on the business; and that this experience should [fol. 731] be obtained by a practical test for such a period of time as will under the facts of the particular business determine the matters which are of doubtful or uncertain influence. In absence of an actual test of the rate, the court on appeal must resolve all doubts against the complaining party; pare down valuations unsparingly; and the rate must appear to be clearly confiscatory, or unjust and unreasonable before the court should by injunction restrain its enforcement in advance of actual experience of the practical results of the rate. And while the equal protection, the due course, and the due process clauses of the fundamental laws of both state and nation guard against the taking of, or compelling of the use of private property for public service without just compensation, still they do not assure the public utility the right under all conditions and circumstances to have a return upon the value of the prop-

erty so used. If actual experience for a proper period of time under the rate complained of should reveal sufficient reasons, the rate order may then be changed through proper channels. Knoxville v. Knoxville Water Co., 212 U. S., 1; Willcox v. Consolidated Gas Co., 212 U. S., 19; Public Service Com. v. G. N. Utility Co., 289 U. S., 130; Georgia Power Co. v. Com., 262 U. S. 625; Louisville v. Cumberland Tel. & Tel. Co., 225 U. S., 430; Brush Electric Co. v. [fol. 732] City of Galveston, 262 U. S. 443; Reno P. L. & W. Co. v. Com., 298 Fed., 790; Los Angeles Gas & Electric Cor. v. Com., 58 Fed. (2) 256 (affirmed 289 U. S. 287); Denver Union Stockyards Co. v. United States, 57 Fed. (2), 735; St. Joseph Stockyards Co. v. United States, 11 Fed. Sup., 322.

In the instant case appellant has continuously charged and collected the 75¢ rate; hence no actual test has been made under the lower 55¢ rate. An actual test of the lower rate might have resulted in a larger return, by bringing about an increase in appellant's business, and manifestly this court would not be warranted in holding that the lower rate was either confiscatory, or unjust and unreasonable, as a matter of law, in advance of an actual test of the rate; but that under the aforementioned rules as applied to the facts, appellant failed, as a matter of law, to show the rate either confiscatory or unjust or unreasonable. The $885,000 valuation of appellant's property by the Commission was extremely liberal, because it included at a valuation of more than $135,000 the two pipe lines which the undisputed evidence showed to be useless except as emergency or standby equipment, and their value for such purposes was not shown. So when the property valuation is pared down to this lowest valuation (about $700,000), and doubtful items of expenses are deducted, the net revenues re- [fol. 733] ceived by appellant under the 75¢ rate for the year ending December 31, 1933, would afford more than a 11% return. And calculations based on the $700,000 valuation and the estimated difference in revenues between the 55¢ rate and the 75¢ rate, show a return of more than 7% for the year 1933. But even if the lower rate did not or would not yield a return of 7% for the year 1933, this court would not be warranted in enjoining the enforcement of the rate, because the test period was too short, no actual

test was made under the lower rate and the undisputed evidence showed the year to be abnormal.

Nor do we sustain appellant's second above stated ground as showing that the 55¢ rate would not as a matter of law afford a reasonable return on its property, because the Commission assumed, contrary to the evidence showing loss of non-recurring industrial revenues and decreasing revenues during the year 1932, that the revenues from and after January 1, 1932, would equal the average revenues for the June, 1928, to July, 1932, period used in the calculation fixing the 55¢ rate. If by this proposition appellant contends that only the operating revenues and expenses for the year ending July 31, 1932, should have been used by the Commission in making its calculations and in fixing the 55¢ rate, then we have hereinabove determined the question against appellant.

[fol. 734] Nor do we sustain the ground urged, if it is the contention of appellant that the Commission erroneously based its calculations in fixing the 55¢ rate upon the average net revenues for the four fiscal years used by it, because the "practical result of using this device was to greatly overstate the net revenues actually being received from existing rates at the date of inquiry, to assume that revenues which had stopped coming in were still being collected, and to apply revenues received during an era of good business, rapid growth and a higher level of prices of construction labor and material to a rate base determined at depression prices, and to test requirements for return at the percentage therefor fixed in consideration of depressed business conditions."

As hereinabove stated, the calculation upon which the Commission based the 55¢ rate order is not shown in the evidence; nor does it appear to be material on this appeal as to what method or calculation the Commission used, because the only ground alleged by appellant as showing the rate order to be either confiscatory or unjust and unreasonable was that the 55¢ rate would not afford a reasonable return on the fair value of appellant's property used in the public service. Under our statutes and practice, the trial of both of these issues on the appeal to the court is [fol. 735] de novo, and is controlled by the principles governing the scope of a court review on appeal of the legis-

lative function of the Commission in making or fixing a public utility rate. Lone Star Gas Co. v. Commission, — S. W. (2d), —, recently decided by this court, in which case we discussed at length the scope of judicial appellate review of a public utility gas rate fixed by the Commission. Suffice it to say here that rate-making is essentially a legislative function; that rates fixed by the Commission have the same force and effect of statutes and are subject to court review to the extent only as statutes of the same import are so subject, with the additional statutory authority of the court to determine whether the rate is unjust and unreasonable, and the inherent power of the court to determine the constitutional question of confiscation. M. K. & T. Ry. Co. v. Commission, 3 S. W. (2d), 489; affirmed 13 S. W. (2d), 678. That the rate fixed by the Commission is presumed to be valid, reasonable and just until declared otherwise by a court of competent jurisdiction. R. R. Commission v. Uvalde Construction Co., 49 S. W. (2d), 1113. That in order to overcome this presumption in favor of the validity of the rate on the constitutional ground of confiscation, the burden of proof rests heavily upon the complaining party. Dayton Power & Light Co. v. Commission, 292 U. S., 290; 79 L. Ed., 832. That in order to [fol. 736] set aside the rate as being unjust and unreasonable, the statute (Art. 6059) requires the complaining party to show "by clear and satisfactory evidence that such rate is unreasonable and unjust." That the complaining party attacking a rate as being unreasonable and unjust must allege facts which if proved would show the rate to be unjust and unreasonable as a matter of law; and to prove by clear and satisfactory evidence "which leaves no reasonable doubt in the judicial minds that the rate is unjust and unreasonable." R. R. Commission v. Weld & Neville, 96 Tex., 409; R. R. Com. v. Galveston Chamber of Commerce, 105 Tex., 101; 145 S. W. 573. That in advance of any actual test of the practical result of the new rate, the court on appeal will not disturb the rate where it is based upon conflicting evidence as to valuations of property, or as to any other item used as a basis for the calculation of the rate; because to do so would merely substitute the findings of the court or jury upon conflicting evidence for that of the Commission, and would therefore permit the court to exercise the legislative function of rate-making. R. R. Commission v. Shupee, 57 S. W. (2d), 295; affirmed

73 S. W. (2d), 505. And that by "resolving all doubts against" the appellant, "and using valuations pared down unsparingly," there could have been no reasonable doubt [fol. 737] in the judicial mind that the 55¢ rate was neither confiscatory nor unjust and unreasonable. Newton v. Consolidated Gas Co., 258 U. S., 165, 66 L. Ed. 547.

The auditor for Laredo showed in his above quoted calculations that the average net revenue for the 5-year period used in the trial court, less annual depreciation of 3% on the $885,000 valuation of appellant's property, would yield an average annual return of 8.46%. If under the rule that in absence of any actual test of the new rate, the court must resolve all doubts against appellant, and pare down unsparingly valuations, and if the lowest valuation shown by the evidence (about $700,000) is used in the calculation, then the average net return received by appellant under the existing rate for the 5-year period, would yield an average annual return of more than 10%. The same calculations of the auditor also show that if the average net revenues for the 4-year period used in the hearing before the Commission are utilized, such revenues, less 3% on the $885,000 valuation of appellant's property, would yield an average annual return of 9.47%. If the lower $700,000 valuation is used in the calculation, the average net revenues for the 4-year period would yield a return of more than 11%. Thus it was shown that under the existing rate appellant has received an average annual [fol. 738] return, even through several depression years, of about 11% on the value of its property used in the public service. And since an actual test of the new rate may bring in a larger return, by bringing about an increase in business, we do not feel warranted in setting the rate aside in absence of an actual test under the new rate. Brush Electric Co. v. City of Galveston, 262 U. S., 443. And manifestly the evidence of appellant did not show, as a matter of law, that the lower 55¢ rate would necessarily result in confiscation of its property; nor that the rate was unenforceable because unjust and unreasonable, when viewed in the light of aforementioned rules with regard to the quantum and character of proof required in such cases.

The rate order of the Commission, dated June 13, 1933, provided that the 55¢ rate fixed by it should be effective

from and after January 1, 1932, the effective date of the ordinance of the City of Laredo, which fixed the rate of 40¢. The Commission's order further provided, as follows:

"It is further ordered by the Railroad Commission of Texas that the Texas Border Gas Company shall refund to the City of Laredo, for the benefit of the domestic consumers, the difference between the amount collected by the Border Gas Company and the amount that would have been due by domestic consumers under this order."

The trial court declared this provision of the rate order invalid and of no force and effect; but without prejudice [fol. 739] to the rights of the City of Laredo to bring suit for the refund "should this provision be held valid upon final determination of this cause on appeal." By cross-assignments of error appellees seek to have this portion of the trial court's judgment reformed so as to declare said provision for the refund valid and enforceable.

We have reached the conclusion that the provision of the rate order making the 55¢ rate retroactively effective as of January 1, 1932, and providing for the refund of any amount collected in excess thereof is valid and enforceable. The authority to initiate the proceeding to reduce the gas rate is in the City of Laredo under Art. 1175, and the utility is given the right of an appeal from the ordinance fixing the rate to the Commission under Art. 6058, the material portions of which read, as follows:

"When a city government has ordered any existing rate reduced, the gas utility affected by such order may appeal to the Commission by filing with it on such terms and conditions as the Commission may direct, a petition and bond to review the decision, regulation, ordinance, or order of the city, town or municipality. Upon such appeal being taken the Commission shall set a hearing and may make such order or decision in regard to the matter involved therein as it may deem just and reasonable. The Commission shall hear such appeal de novo."

The appeal to the Commission under the terms of this article is essentially to review the city ordinance fixing [fol. 740] the gas rate, and since it "may make such order or decision in respect to the matter (rate) involved therein as it may deem just and reasonable," the Commission's

functions are not only legislative but quasi-judicial as well. In the exercise of these reviewing and quasi-judicial functions the Commission is authorized to suspend, pending the appeal before it, the rate fixed by the city ordinance, and to require the utility to give a bond "on such terms and conditions as the Commission may direct." Accordingly on the appeal to the Commission, appellant filed its bond, which was approved and accepted by the Commission, and which bond was conditioned as follows:

"* * * principal and surety shall refund and pay to the City of Laredo for the benefit of the consumers in said city, any excess of rates or charges collected by the principal * * * over and above the rates or charges that shall be finally determined a fair and reasonable return. * * *"

The supersedeas bond filed in this appeal is similarly conditioned.

Since the Commission had the power to suspend the reduced city ordinance rate pending the appeal, it necessarily had the power to reinstate such rate if found to be just and reasonable as of its original effective date. Likewise the Commission had the power upon determining that the city ordinance rate was unjust or unreasonable, to [fol. 741] substitute its own just and reasonable rate therefor, and to make it effective as of date of the city ordinance rate for which it was substituted.

It is further manifest that the powers given the Commission by Article 6058 to review a city ordinance rate on appeal and to determine its justness and reasonableness, and if found to be unjust and unreasonable, to substitute its own just and reasonable rate therefor, are not only legislative and administrative functions, but quasi-judicial as well; and in the full exercise of such power it necessarily follows that the Commission had the power to make its own rate effective as of the date of the city ordinance rate, which it has reviewed and adjudicated as being unjust and unreasonable. See as dealing with quasi-judicial functions of utility commissions: Producers Refining Com. v. M. K. & T. Ry. Co. (Com. App.), 13 S. W. (2d), 680; Baer Bros. Merc. Co. v. Denver & R. E. Ry. Co., 233 U. S., 479; L. & M. Ry. Co. v. Finn, 235 U. S. 601. And since the Commission's functions are essentially to review and ad-

judicate the justness and reasonableness of the city ordinance rate on appeal, its jurisdiction necessarily relates back to the date of the initial proceedings in which the city ordinance rate originated and first became effective. The [fol. 742] rule is settled that a public utility commission has the power to make its rate order retroactively effective as of any date after it has actually acquired jurisdiction of the cause; and in consequence may order the refund of excessive rates paid from and after the retroactively effective date of the rate order. See State ex rel Boynton v. Public Service Commission of Kansas, P. U. R. 1933a, 415; State v. Public Service Commission (Mo.), 272 S. W., 957; Ill. R. R. Co. v. Best, 39 Fed. (2), 658.

In accordance with our above conclusions, the judgment of the trial court is reformed so as to also declare the retrospective effective date and refund provision of the rate order of the Commission valid and enforceable, and as thus reformed the judgment of the trial court will be affirmed.

M. B. Blair, Associate Justice.

Reformed and Affirmed.

[File endorsement omitted.]

[fol. 743] In Court of Civil Appeals, Third Judicial District of Texas

No. 8176

United Gas Public Service Company

vs.

State of Texas et al.

Appeal from District Court of Travis County

Opinion by Associate Justice Blair

Judgment—October 30, 1935

This cause came on to be heard on the transcript of the record and same being inspected; because it is the opinion of the Court that there was on error in the judgment

except that said judgment should be reformed so as to also declare the retrospective effective date and refund provision of the rate order of the Railroad Commission, valid and enforceable. It is therefore considered, adjudged and ordered that the judgment of the trial court be, and same is hereby reformed, so as to also declare the retrospective effective date and refund provision of the rate order of the Railroad Commission valid and enforceable and as so reformed, the judgment be, and same is hereby in all things affirmed,—that the appellant United Gas Public Service Company, principal and The Fidelity and Casualty Company of New York, Surety, pay all costs in this behalf expended and this decision be certified below for observance.

(Notation of record entry omitted)

[fol. 744] IN COURT OF CIVIL APPEALS, THIRD JUDICIAL DISTRICT

No. 8176

[Title omitted]

APPELLANT'S MOTION FOR REHEARING—Filed November 14, 1935

Comes United Gas Public Service Company, appellant in the above styled and numbered cause, and moves this Honorable Court to set aside its judgment reforming and, as thus reformed, affirming the judgment of the 53rd District Court of Travis County, Texas, entered April 24, 1934 (Tr. 245) and to grant appellant a rehearing, and, as the grounds for this motion, shows:

1

The Court of Civil Appeals erred in overruling and in refusing to sustain appellant's Assignment of Error No. 1, submitted as Proposition One, as follows:

"The court erred in denying appellant's motion for peremptory instruction when timely made at the conclusion of all testimony, and in entering judgment for appellees,

because the evidence in the record most favorable to appellees showed, as a matter of law, that the existing $0.75 rate had not yielded a net return of 7 per cent per annum from January 1, 1932, down to the date of the trial, and [fol. 745] that therefore the action of the Commission in prescribing and in seeking to impose and enforce the lower $0.55 rate in Laredo was beyond the power of the Commission."

2

The Court of Civil Appeals erred in refusing to sustain and in overruling appellant's Assignment of Error No. 2, submitted as Proposition Two, as follows:

"The court erred in overruling appellant's said motion for peremptory instruction, and in entering judgment for appellees, because the undisputed evidence in the record showed that the $0.55 rate prescribed in the Commission's said order of June 13, 1933, was fixed upon the assumption that the appellant's revenues in Laredo from and after January 1, 1932, would be equal to the average of its said revenues for the period which commenced July 1, 1928, and which ended July 31, 1932, and that such assumption was contrary to the facts, and erroneous, and hence said $0.55 rate could not be enforced, because unlawfully made."

3

The Court of Civil Appeals erred in refusing to sustain and in overruling appellant's Assignment of Error No. 3, submitted as Proposition Three, as follows:

"The court erred in overruling appellant's said motion for peremptory instruction, and in entering judgment for appellees, because the evidence in the record most favorable to appellees showed, as a matter of law, that from January 1, 1932, to the date of the suit and trial, the enforcement of the Commission's said order and the imposition of the $0.55 rate prescribed therein would compel ap- [fol. 746] pellant to serve gas in Laredo at rates not sufficient to yield a reasonable return on the fair value of appellant's property, and would deny appellant the equal protection of the laws and deprive appellant of its property without due process of law and without due course of

the law of the land, and hence said order and rate were unenforceable, because unjust, unreasonable and confiscatory,"

the overruling of such Assignment and the judgment of the Court of Civil Appeals based thereon being in violation of appellant's constitutional rights under Sec. 1, 14th Amendment, U. S. Constitution, and Secs. 17 and 19, Article I, Constitution of Texas.

4

The Court of Civil Appeals erred in refusing to sustain and in overruling appellant's Assignment of Error No. 4, submitted as Proposition Four, as follows:

"The court erred in overruling appellant's motion for judgment non obstante veredicto, and in refusing to enter judgment for appellant, because the evidence in the record most favorable to appellees showed, as a matter of law, that the existing $0.75 rate had not yielded a net return of 7 per cent per annum from January 1, 1932, down to the date of the trial, and that therefore the action of the Commission in seeking to impose and enforce the lower $0.55 rate in Laredo was beyond the power of the Commission."

5

The Court of Civil Appeals erred in refusing to sustain and in overruling appellant's Assignment of Error No. 5, submitted as Proposition Five, as follows:

[fol. 747] "The court erred in overruling appellant's motion for judgment non obstante veredicto, and in refusing to enter judgment for appellant, because the undisputed evidence in the record showed that the $0.55 rate prescribed in Commission's said order of June 13, 1933, was fixed upon the assumption that appellant's revenues in Laredo from and after January 1, 1932, would be equal to the average of its said revenues for the period which commenced July 1, 1928, and which ended July 31, 1932, and that such assumption was contrary to the facts, and erroneous, and hence said $0.55 rate could not be enforced because unlawfully made."

6

The Court of Civil Appeals erred in refusing to sustain and in overruling appellant's Assignment of Error No. 6, submitted as Proposition Six, as follows:

"The court erred in overruling said appellant's motion for judgment non obstante veredicto, and in refusing to enter judgment for appellant, because the evidence in the record most favorable to appellees showed, as a matter of law, that the enforcement of the Commission's said order and the imposition of said $0.55 rate prescribed therein would compel appellant to serve gas in Laredo, from January 1, 1932, down to the date of the suit and trial, at rates not sufficient to yield a reasonable return on the fair value of appellant's property and would deny appellant the equal protection of the laws and deprive appellant of its property without due process of law and without due course of the law of the land, and hence such order and rate were unenforceable because unjust, unreasonable and confiscatory,"

the overruling of such Assignment and the judgment of the Court of Civil Appeals based thereon being in violation of appellant's constitutional rights under Sec. 1, 14th Amend-
[fol. 748] ment, U. S. Constitution, and Secs. 17 and 19, Article I, Constitution of Texas.

7

The Court of Civil Appeals erred in refusing to sustain and in overruling appellant's Assignment of Error No. 7, submitted as Proposition Seven, as follows:

"The court erred in entering judgment upon the verdict of the jury herein, because said verdict is without support in the evidence, and is contrary to the great and overwhelming weight of the evidence, in that the evidence in the record most favorable to appellees showed, as a matter of law, that the enforcement of the $0.55 rate prescribed in the Commission's said order would result in confiscation of appellant's property from the effective date of such order down to the date of the suit and trial,"

the overruling of such Assignment and the judgment of the Court of Civil Appeals based thereon being in violation of appellant's constitutional rights under Sec. 1, 14th Amend-

ment, U. S. Constitution, and Secs. 17 and 19, Article I, Constitution of Texas.

• • • • • • •

9

The Court of Civil Appeals erred in refusing to sustain and in overruling appellant's Assignment of Error No. 9, submitted as Proposition Nine, as follows:

[fol. 749] "The court erred in entering its judgment dated April 24, 1934, decreeing the Commission's said order valid and permanently enjoining appellant from thereafter charging rates in excess of the $0.55 rate prescribed therein, because the evidence in the record most favorable to appellees showed, as a matter of law, that the effect of enforcing said rate at the date of the trial and from January 1, 1932, would be confiscation of appellant's property, and the court's judgment seeking to prescribe and impose such $0.55 rate from the date of the decree until changed by the Commission or City was beyond the judicial power of the court,"

the overruling of such Assignment and the judgment of the Court of Civil Appeals based thereon being in violation of appellant's constitutional rights under Sec. 1, 14th Amendment, U. S. Constitution, and Secs. 17 and 19, Article I, Constitution of Texas.

10

The Court of Civil Appeals erred in refusing to sustain and in overruling appellant's Assignment of Error No. 10, submitted as Proposition Ten, as follows:

"The court erred in entering its judgment dated April 24, 1934, decreeing the Commission's said order valid and permanently enjoining appellant from thereafter charging rates in Laredo in excess of the $0.55 rate prescribed therein, because the undisputed evidence in the record showed that said $0.55 rate was unlawfully made upon the erroneous assumption that appellant's revenues in Laredo from and after January 1, 1932, would be equal to the average of such revenues for the period which commenced July

[fol. 750] 1, 1928, and which ended July 31, 1932, and hence the judgment of the court seeking to impose and enforce such rate from the date of the decree was unsupported by evidence and beyond the judicial power of the court,"

the overruling of such Assignment and the judgment of the Court of Civil Appeals based thereon being in violation of appellant's constitutional rights under Sec. 1, 14th Amendment, U. S. Constitution, and Secs. 17 and 19, Article I, Constitution of Texas.

11

The Court of Civil Appeals erred in holding that the presumption in favor of the Commission's 55¢ rate order was such that the record of the trial below—which in fact showed upon evidence most favorable to appellees that the existing 75¢ rate did not yield a reasonable return at the time of the Commission hearing or down to the date of trial, and that the result of the enforcement of the order for the two years following its effective date and immediately preceding the trial would leave appellant a return of only 1-14/100 per cent and 2-19/100 per cent of $885,000 in 1932 and 1933 respectively—failed as a matter of law to raise any issue of confiscation for determination, because such holding and the Court's judgment pursuant thereto violate the fundamental constitutional rule that a rate not [fol. 751] sufficient to yield a reasonable return on the value of the property used at the time it is being used to render the service is unjust, unreasonable and confiscatory, and the Court's judgment enforcing such order from its effective date is therefore contrary to Sec. 1, 14th Amendment, U. S. Constitution, and Secs. 17 and 19, Article I, Constitution of Texas.

* * * * * * *

14

The Court of Civil Appeals erred in holding that the presumption in favor of the Commission's 55¢ rate order was such that the record of the trial below—which in fact showed on evidence most favorable to appellees that the existing 75¢ rate did not yield a reasonable return at the time of the Commission hearing or down to the date of trial, and that the enforcement of such order for the two

years following its effective date and immediately preceding the time of trial would leave appellant only 1-14/100 per cent and 2-19/100 per cent of $885,000 in 1932 and 1933 respectively—failed as a matter of law to raise any issue of confiscation until after appellant had yielded to the enforcement of such order and had charged such 55¢ rate for a time sufficiently long to remove all doubt that appellant's property had been confiscated thereby, because such [fol. 752] holding and the judgment of the Court of Civil Appeals pursuant thereto violate the fundamental constitutional rule that rates not sufficient to yield a reasonable return on the value of the property used at the time it is being used to furnish the service are void, and deny appellant, upon the facts shown to exist at the trial, a remedy to have the order declared void before it is enforced and thereby to prevent confiscation, contrary to appellant's rights under Sec. 1, 14th Amendment, U. S. Constitution and Secs. 17 and 19, Article I, Constitution of Texas.

15

The Court of Civil Appeals erred in holding that the evidence at the trial below showing the actual results of operations and the actual result of enforcing the Commission's 55¢ rate order from its effective date during the two years, 1932 and 1933, immediately preceding the date of trial, was insufficient, as a matter of law, to overcome the presumption in favor of the order or to raise any issue of confiscation for determination by the trial court, because the evidence most favorable to appellees relating to 1932 and 1933 showed that enforcement in those years would leave appellant practically nothing for return, and such holding and the judgment of the Court of Civil Appeals based thereon [fol. 753] violate the fundamental rule that in determining the validity and enforceability of a rate order made effective and sought to be enforced for an elapsed period of time, evidence of the actual facts, conditions and result of enforcement in such elapsed period must be given controlling legal effect, and the Court's judgment therefore violates appellant's rights under Sec. 1, 14th Amendment, U. S. Constitution and Secs. 17 and 19, Article I, Constitution of Texas.

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18

The Court of Civil Appeals erred in holding that the presumption in favor of the Commission's 55¢ rate order could only be overcome either by showing that the order had been made by the Commission without substantial supporting evidence or by showing that the rate had been put into effect and that confiscation in fact was the result of its enforcement over a period sufficiently long to remove all doubt and give an average of changing conditions from year to year, because the presumption so construed and applied denies appellant the right and opportunity to have all issues of confiscation alleged to result from the enforcement of such order determined upon the independent judg-
[fol. 754] ment of the proper courts of this state both as to law and facts in advance of the actual enforcement of the order and thus denied appellant a trial and remedy to prevent confiscation in accordance with due process and due course of law, in violation of appellant's rights under Sec. 1, 14th Amendment, U. S. Constitution, and Secs. 17 and 19, Article I, Constitution of Texas, and the Court of Civil Appeals erred in failing to declare such order void.

19

The Court of Civil Appeals erred in holding that the evidence adduced at the trial below was insufficient, as a matter of law, to raise any issue that the Commission's 55¢ rate order, if enforced from its effective date, would be unjust, unreasonable or confiscatory, because the Court of Civil Appeals, in aid of said presumption, gave controlling legal effect to the average of the greatly higher revenues and more favorable operating results from July 1928 through July 1932, when the evidence at the trial showed without dispute that conditions and operating results had drastically changed for the worse by January 1, 1932 as compared with the average thereof for the above stated four year period, in violation of the fundamental constitutional rule that profits in a period prior to the effective date of a rate reduction order cannot be employed to reduce
[fol. 755] existing rates which, under the conditions prevailing at the effective date of the attempted reduction, are no more than reasonable, or as a device to impose and enforce confiscatory rates for the present and future, and the Court's judgment is therefore repugnant to Sec. 1, 14th

Amendment, U. S. Constitution, and Secs. 17 and 19, Article I, Constitution of Texas.

20

The Court of Civil Appeals erred in construing the quantum and character of proof necessary to overcome the presumption in favor of the Commission's 55¢ rate order, and to raise an issue in the trial below that such order was in any respect unjust, unreasonable or confiscatory, because such presumption is attached to an order referable to the police power of the State, and is therefore only a rebuttable presumption of the existence of facts to support the order, which presumption, under the law, must yield to proof of the actual facts and conditions to which the order is at any time sought to be applied, and as construed and applied by the Court of Civil Appeals to the facts and the trial in this case, the Court's holding and judgment pursuant thereto deny appellant its rights guaranteed by Sec. 1, 14th Amendment, U. S. Constitution and Secs. 17 and 19, Article I, Constitution of Texas.

[fol. 756]

21

The Court of Civil Appeals erred in holding that the evidence adduced at the trial below was insufficient, as a matter of law, to overcome the presumption in favor of the Commission's 55¢ rate order, or to raise for determination any issue that the order was unjust, unreasonable or confiscatory, and, in aid of such presumption, in holding that it was the duty of the court to take the conflicting evidence of value of appellant's property and, selecting therefrom the lowest valuation figure, regardless of the legal admissibility of the testimony supporting such figure and completely disregarding all other testimony showing a higher value, to use such lower figure as the rate base to determine the appellant's rate of return, because evidence of value in this trial was competent only upon the issue that the Commission had unlawfully undervalued appellant's property, and it is beyond the judicial power of the courts of this State to substitute for a valuation fixed as a rate base by the Commission a rate base fixed by the Court, the judicial power being confined to setting aside the rate order if the rate base fixed therein is unlawful, and such holding and judgment of the Court of Civil Appeals pur-

suant thereto violate appellant's rights under Sec. 1, 14th Amendment, U. S. Constitution and Secs. 17 and 19, Article I and Article II, Constitution of Texas.

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[fol. 757] 25

The Court of Civil Appeals erred in holding that the evidence adduced at the trial below was insufficient, as a matter of law, to overcome the presumption in favor of the Commission's 55¢ rate order and to raise any issue that such order was unjust, unreasonable or confiscatory, because, in aid of such holding, the Court of Civil Appeals found that the effect of enforcing the 55¢ rate in 1933 would leave appellant a net annual return of more than 7 per cent in that year, such finding being without evidence in the record to support it, and the Court's judgment pursuant to such finding violates Sec. 1, 14th Amendment, U. S. Constitution, and Secs. 17 and 19, Article I, Constitution of Texas.

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27

The Court of Civil Appeals erred in holding that the evidence adduced at the trial below was insufficient, as a matter of law, to overcome the presumption in favor of the Commission's 55¢ rate order and to raise any issue that such order was unjust, unreasonable or confiscatory, because, in aid of such holding, the Court of Civil Appeals found that the effect of enforcing the 55¢ rate in 1933 would [fol. 758] leave appellant a net return of more than 7 per cent in that year, because such finding is without evidence in the record to support it and the Court's conclusion is based on material error both of fact and law, in that it appears without dispute both from the record and the Court's opinion that the Court arrived at such conclusion by substituting for the fair value of $885,000 fixed as a rate base by the Commission a lower figure of $700,000 selected from conflicting evidence at the trial on which no proper finding had been made, and such holding and the Court's judgment pursuant thereto violate appellant's rights under Sec. 1, 14th Amendment, U. S. Constitution, and Secs. 17 and 19, Article I, Constitution of Texas.

28

The Court of Civil Appeals erred in holding that the evidence in the trial below was insufficient, as a matter of law, to overcome the presumption in favor of the Commission's 55¢ rate order and to raise for determination any issue that the order was unjust, unreasonable or confiscatory, because the Court, in aid of such presumption, has attempted to give to the testimony introduced by appellees on this trial, and to all inference and conclusions drawn by appellees therefrom, the quality and legal effect of undisputed and indisputable evidence, and thereby appellant has been [fol. 759] denied a trial in accordance with due process, and due course of law, and as provided by the statutes of Texas, contrary to Sec. 1, 14th Amendment, U. S. Constitution, Secs. 17 and 19, Article I, Constitution of Texas, and Article 6059, R. C. S. of Texas, 1925.

29

The Court of Civil Appeals erred in holding that the evidence in the trial below was insufficient, as a matter of law, to overcome the presumption in favor of the Commission's 55¢ rate order, and to raise any issue that such order was unjust, unreasonable or confiscatory, if enforced, because the Court of Civil Appeals has attempted to aid and bolster up such holding by reciting in its opinion certain testimony or purported testimony offered at the trial by appellees, wholly ignoring all other testimony in the record sharply controverting the testimony selected and recited by the Court, and without first requiring the trial court to decide the ultimate issues of fact made by such conflicting evidence, in violation of appellant's right to a trial of the issues of confiscation upon the independent judgment of a court competent to determine the ultimate issues of fact from conflicting evidence and to apply the law thereto, [fol. 760] contrary to Sec. 1, 14th Amendment, U. S. Constitution, and Secs. 17 and 19, Article I, Constitution of Texas, and Article 6059, R. C. S. of Texas, 1925.

30

The Court of Civil Appeals erred in holding that the evidence at the trial was insufficient, as a matter of law, to overcome the presumption in favor of the Commission's

55¢ rate order and to raise an issue that such order was in any respect unjust, unreasonable or confiscatory, because such holding is based on the conclusion that the Commission's order was made on conflicting evidence and that in this trial, the courts of Texas are incompetent to determine any issue of confiscation raised by pleadings and proof of the Commission's unlawful undervaluation of property, unlawful understatement of proper and reasonable operating expenses and proper annual rates of return and depreciation reserve accrual, since to do so, this Court holds, would be to substitute the findings of a court for those of the Commission, when it appears that the Court directly contrary to the purported rule of law first stated, has then attempted to bolster up its holding that no issue of confiscation was raised by selecting, from conflicting testimony as to which no ultimate findings were made by a proper court, a valuation figure materially lower than [fol. 761] that fixed by the Commission, and has employed such valuation figure in reaching its conclusions, in violation of appellant's right to a trial in accordance with due process and due course of law, and with the fundamental principles of justice, contrary to Sec. 1, 14th Amendment, U. S. Constitution, Secs. 17 and 19, Article I, Constitution of Texas, and the statutes and laws of Texas.

31

The Court of Civil Appeals erred in holding that since the 55¢ rate order of the Railroad Commission of Texas was made upon conflicting evidence, the trial court could not consider and determine upon its own independent judgment the issues of confiscation made by pleadings and evidence as to the Commission's unlawful undervaluation of appellant's property, unlawful understatement and elimination of operating expenses, unlawful understatement of percentages for reasonable annual return and depreciation reserve accrual, and in holding that a judicial determination of these basic facts when advanced to show confiscation was not required because to do so would be to substitute the findings of the court for those of the Commission, because upon such holding this Court decreed the enforcement of the Commission's said order and thereby denied to appellant the opportunity to have these issues of con- [fol. 762] fiscation determined upon the independent judg-

ment of the courts of Texas both as to law and facts, and confiscation thereby and therefrom prevented, in violation of appellant's right to a trial in accordance with due process and due course of law under Sec. 1, 14th Amendment, U. S. Constitution, and Secs. 17 and 19, Article I, Constitution of Texas.

32

The Court of Civil Appeals erred in holding that since the 55¢ rate order of the Commission was made upon conflicting evidence of property value, the trial court could not consider and determine upon its own independent judgment the issue of confiscation made by pleadings and evidence arising from the Commission's unlawful undervaluation of appellant's property, and in holding that a judicial determination of this issue would be to substitute the findings of a court for those of the Commission, because the appellant was thereby denied the opportunity to have the issue of confiscation arising from the Commission's unlawful undervaluation of its property determined by a judicial tribunal upon its independent judgment as to law and facts, and was denied the right to have confiscation resulting therefrom prevented, contrary to appellant's right to a trial [fol. 763] in accordance with due process and due course of law guaranteed by Sec. 1, 14th Amendment, U. S. Constitution, and Secs. 17 and 19, Article I, Constitution of Texas.

33

The Court of Civil Appeals erred in holding that, since the 55¢ rate order of the Commission was made upon conflicting evidence, the trial court could not consider or determine the issue of confiscation arising from the Commission's unlawful elimination of appellant's operating expenses actually and in good faith incurred in furnishing the service for which such 55¢ rate was to be charged, and in holding that a judicial determination of the Commission's unlawful elimination of operating expenses would be to substitute the findings of the court for those of the Commission, and appellant was thereby denied the opportunity to have such issue of confiscation determined upon the independent judgment of a judicial tribunal both as to law and facts, and the right to have confiscation arising therefrom prevented, contrary to appellant's right to a trial in accordance with

due process and due course of law guaranteed by Sec. 1, 14th Amendment, U. S. Constitution, and Secs. 17 and 19, Article I, Constitution of Texas.

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[fol. 764] 35

The Court of Civil Appeals erred in holding that, since the 55¢ rate order of the Commission was made upon conflicting evidence, the trial court could not consider or determine the issue of confiscation arising from the Commission's unlawful understatement of a proper annual accrual for depreciation reserve, such issue being made by appropriate pleadings and evidence, and in holding that a judicial determination of this issue would be to substitute the findings of the court for those of the Commission, and appellant was thereby denied the opportunity to have this issue of confiscation determined upon the independent judgment of the court both as to law and facts and was denied the right to have confiscation resulting therefrom prevented, contrary to appellant's right to a trial in accordance with due process and due course of law guaranteed by Sec. 1, 14th Amendment, U. S. Constitution, and Secs. 17 and 19, Article I, Constitution of Texas.

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37

The record showing that in the 55¢ rate order the Commission and others had brought this suit to enforce from January 1, 1932, the Commission had fixed fair value at [fol. 765] $885,000, and reasonable rates of annual return and depreciation reserve accrual at 7 per cent and 3 per cent respectively of $885,000, and the evidence at the trial most favorable to appellees showing that the effect of the enforcement of the order would leave appellant $10,086.25 (1-14/100 per cent of $885,000) in 1932 and $18,418.39 (2-19/100 per cent of $885,000) in 1933, the court erred in decreeing the enforcement of the order upon the ground that appellant could not raise an issue of confiscation without first putting the rate into effect and actually testing it over a period of years sufficiently long to give an average of changing conditions from year to year, and in holding that the evidence showing the effect of the enforcement

of the order for the elapsed years 1932 and 1933 was insufficient, as a matter of law, to overcome the presumption in favor of such order and to raise any issue of confiscation from its enforcement, because such holding and judgment deny appellant the opportunity and right to prevent confiscation arising from the retroactive enforcement of the order from January 1, 1932, its effective date, contrary to appellant's rights under Sec. 1, 14th Amendment, U. S. Constitution, and Secs. 17 and 19, Article I, Constitution of Texas.

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[fol. 766] 40

The Court of Civil Appeals, in passing on the issue of confiscation arising under the Federal and State Constitutions, erred in refusing to find or consider the result of the enforcement of the Commission's 55¢ rate order as applied to the facts and conditions to which such order was made effective, by refusing to require the trial court to find, in the exercise of an independent judgment as to the law and facts, the return which appellant would receive for the use of its property if such order were enforced from January 1, 1932, its effective date, to the date the trial record was closed, and thus denied appellant the opportunity to have a judicial determination and review of the issue of confiscation arising from the retroactive enforcement of such order for the period of time which had elapsed from its effective date to the time of trial, and denied appellant the right to have such confiscation prevented, contrary to appellant's rights under Sec. 1, 14th Amendment, U. S. Constitution, and Secs. 17 and 19, Article I, Constitution of Texas.

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42

The Court of Civil Appeals committed material error in deciding this case, by giving to the presumption in favor [fol. 767] of the Commission's 55¢ rate order controlling legal effect over the evidence at the trial showing the facts, and particularly the facts, conditions, and operating results which had come into existence since the effective date of the rate order, because such presumption is not evidence

of any fact and vanishes in the presence of actual facts, and since the evidence of the actual facts at the trial most favorable to appellees showed that the result of enforcing the Commission's order would leave appellant for return not over 1-14/100 and 2-19/100 per cent of $885,000 respectively for the years 1932 and 1933, the judgment of the Court of Civil Appeals reforming the judgment of the lower court so as to enforce the retrospective effective date and refund provisions of the rate order and in affirming the judgment below is not supported by competent evidence, and operates to take appellant's property without due process and due course of law, contrary to Sec. 1, 14th Amendment, U. S. Constitution, and Secs. 17 and 19, Article I, Constitution of Texas.

43

The Court of Civil Appeals erred in holding that the method used by the Commission in fixing the 55¢ rate had no material bearing upon any of the issues of confiscation in this trial, since the record showed without dispute that [fol. 768] the Commission's 55¢ rate order was based on the assumption that appellant's revenues and operating results in Laredo commencing with January 1, 1932 would equal the average of the materially higher revenues and more favorable operating results for a prior four year period which commenced July 1928 and ended with July 1932, the legal effect of this method, as shown by the actual results of operations in 1932 and 1933, being to employ profits received in the past under favorable economic and operating conditions as a device to impose confiscatory rates during a period of depressed economic conditions and changed operating conditions in 1932 and 1933, in violation of appellant's right to a trial in accordance with due process and due course of law and its right to just compensation guaranteed by Sec. 1, 14th Amendment, U. S. Constitution, and Secs. 17 and 19, Article I, Constitution of Texas.

44

Under the judicial system in Texas, the determination of questions of fact being for the trial court, and the only function of the Court of Civil Appeals with reference to findings of fact being to determine whether there is any or any sufficient evidence to support such findings, the Court

[fol. 769] of Civil Appeals being bound by findings of fact made in the lower court on sufficient evidence, the Court of Civil Appeals erred in decreeing the enforcement of the Commissions's 55¢ rate order in the absence of findings by the lower court upon the facts controlling the determination of the issues of confiscation raised in the trial below alleged to result from the Commission's unlawful undervaluation of appellant's property, its unlawful understatement of reasonable operating expenses, annual rates of return and depreciation reserve accrual, and the result of enforcing the order from its effective date, and in the absence of findings by the lower court of the ultimate facts controlling the determination of these issues of confiscation, the Court's judgment upholding the validity of such order and enforcing it from its effective date violates appellant's right to a trial of the issues of confiscation in accordance with due process and due course of law guaranteed by Sec. 1, 14th Amendment, U. S. Constitution, and Secs. 17 and 19, Article I, Constitution of Texas.

45

The Court of Civil Appeals committed material error in deciding this case, by holding that the presumption in favor of the Commission's 55¢ rate order was so strong and the quantum of proof required to overcome this presumption [fol. 770] so great that in this trial, even the showing made upon the evidence most favorable to appellees that the retroactive enforcement of such order would leave appellant for return 1-14/100 per cent and 2-19/100 per cent of $885,000 in 1932 and 1933 was insufficient, as a matter of law, to raise for determination any issue that the order was unjust, unreasonable or confiscatory, because, the Court concluded, this period was too short and economic and operating conditions were too abnormal as compared with the prior four year period on which the Commission based its order, and such holding and the Court's judgment pursuant thereto violate the fundamental rule that appellant is entitled to earn a reasonable return on the property used at the time it is being used to render the service, contrary to Sec. 1, 14th Amendment, U. S. Constitution, and Secs. 17 and 19, Article I, Constitution of Texas.

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49

The Court of Civil Appeals having held that under the statutes and procedure of Texas, the district court of Travis County was without power to exercise an independent judgment as to the probative force of the facts involved and the law applicable thereto on the issues of confiscation as raised [fol. 771] by appellant's answer and its evidence, the Court of Civil Appeals erred in enforcing said order and in refusing to declare the same void as being in conflict with Sec. 1, 14th Amendment, U. S. Constitution.

50

The Court of Civil Appeals having held that the district court of Travis County was the only state court in Texas having jurisdiction to determine the validity of the Commission's 55¢ rate order, and having construed the statutes of the State of Texas, and particularly Article 6059, R. C. S. of Texas, 1925, as withholding from the district court of Travis County the power to determine the question of confiscation under the Federal Constitution according to its independent judgment both as to law and facts, the Court of Civil Appeals erred in enforcing the order and in not holding the same invalid and contrary to Sec. 1, 14th Amendment, U. S. Constitution, for want of due process of law in the state procedure for testing the validity of such order and preventing confiscation from the enforcement thereof.

51

The judgment of the Court of Civil Appeals is erroneous in that the court in effect has denied to the district court of [fol. 772] Travis County the power to find and exercise an independent judgment with respect to the facts showing whether or not the enforcement of the Commission's 55¢ rate order from its effective date will result in confiscation, and inasmuch as neither the Court of Civil Appeals nor the Supreme Court of Texas, being appellate courts, have any statutory power to find such facts, appellant has been denied by this Court's holding and decree pursuant thereto the opportunity of having the independent judgment of a Texas court on questions of fact involved in a determination of the issues of confiscation and thus has been denied a trial in accordance with due process of law in violation of appel-

lant's rights under Sec. 1, 14th Amendment, U. S. Constitution.

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57

The Court of Civil Appeals erred in decreasing the enforcement of the Commission's 55¢ rate order by holding that under the provisions of Article 6059, R. C. S. of Texas, 1925, the order of the Railroad Commission must be upheld by the district court if supported by substantial evidence at the trial, and thus in effect denying appellant the right to the independent judgment of the court having the exclusive original jurisdiction to find the facts from disputed [fol. 773] evidence upon the basis of which the issue of confiscation is to be determined, which right would have been available to appellant had it been permitted to prosecute the suit which it filed in the federal court, because the provisions of Article 266 of the Judicial Code, as amended, in view of which this suit is claimed by appellees to have been instituted and appellant's suit in the federal court stayed, contemplate and require that appellant in this case have and receive the same rights and remedies in the determination of questions arising under the United States Constitution as would have been available to appellant in the federal court, and appellees having instituted this suit under the conditions imposed on them under the provisions of Article 266 are estopped to assert that appellant is not entitled to this suit to a determination of the issues of confiscation according to the independent judgment of the courts of Texas both on the law and the facts, and the Court of Civil Appeals erred in so construing the statutes of Texas as to result in a deprivation of the rights which appellant was entitled to have under the provisions of Article 266 of the Judicial Code.

58

The Court of Civil Appeals erred in rendering judgment for appellees, because not only does Article 6059, R. C. S. [fol. 774] of Texas, 1925, as construed deny to appellant due process of law under Sec. 1, 14th Amendment, U. S. Constitution, and not only does the Court treat this case and appellant's answer as an appeal under said Article

6059, but appellant has been compelled to follow the procedure outlined thereunder upon representations by appellees that every constitutional and legal right to which appellant might be entitled would be fully safeguarded and that it would be entitled to the same sort of trial to which it would have been entitled in its suit in the federal court, on the basis of which representation the federal court stayed proceedings therein, with the result that not only does appellant fail to get the kind of trial to which it would have been entitled in the federal court but is denied by this Court's judgment the opportunity of ever obtaining the same, in violation of appellant's rights under Sec. 1, 14th Amendment, U. S. Constitution.

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66

The Court of Civil Appeals erred in refusing to consider and in failing to sustain appellant's Assignment of Error No. 11, presented as Proposition Eleven, as follows:

[fol. 775] "The Texas statutes make submission to the jury upon special issues mandatory if requested by either party to a jury trial, and it was error for the lower court to deny appellant's seasonable request for submission on special issues."

67

The Court of Civil Appeals erred in refusing to consider and in failing to sustain appellant's Assignment of Error No. 12, presented as Proposition Twelve, as follows:

"Request for submission on special issues having been made, the court erred in submitting the case to the jury on definition of terms and Special Issue No. 1 as follows:

'Special Issue No. 1: Do you find that the order of the Railroad Commission of Texas bearing date June 13, 1933, providing for a fifty-five cent gas rate to residential consumers within the city of Laredo, Texas, under the facts introduced in evidence before you, is unreasonable and unjust as to defendant, United Gas Public Service Company. Answer this question "yes" or "no" ' (Tr. p. 206),

because the charge did not constitute submission of the case to the jury upon the special issues, as made by the pleadings and proof, in compliance with the Texas statutes."

68

The Court of Civil Appeals erred in refusing to consider and in failing to sustain appellant's Assignment of Error No. 13, presented as Proposition Thirteen, as follows:

[fol. 776] "The court erred in giving the charge to the jury over appellant's objection thereto made upon the ground that such charge, and particularly Special Issue No. 1 thereof, was multifarious."

69

The Court of Civil Appeals erred in refusing to consider and in failing to sustain appellant's Assignment of Error No. 14, presented as Proposition Fourteen, as follows:

"The court erred in giving the charge to the jury and in overruling appellant's objection thereto made upon the ground that Special Issue No. 1 thereof submitted to the jury a question of law for determination."

* * * * * * *

73

The Court of Civil Appeals erred in refusing to consider and in failing to sustain appellant's Assignment of Error No. 18, presented as Proposition Eighteen, as follows:

"The court erred in submitting the case to the jury upon the charge given, over appellant's objection thereto seasonably made, upon the ground that submission in this manner denied appellant a trial in accordance with due process of law upon appellant's defenses of confiscation under the Federal Constitution."

74

The Court of Civil Appeals erred in refusing to consider and in failing to sustain appellant's Assignment of Error [fol. 777] No. 19, presented as Proposition Nineteen, as follows:

"The Court erred in submitting the case to the jury upon the charge given over appellant's objection thereto seasonably made that upon the record in such case, appellant was thereby deprived of the opportunity of knowing

the grounds for the jury's verdict and for any judgment of the court based thereon, and was prevented from reserving for review in the courts of appeal, State and Federal, questions as to the existence and sufficiency of evidence to support the verdict and judgment."

75

The Court of Civil Appeals erred in refusing to consider and in failing to sustain appellant's Assignment of Error No. 20, presented as Proposition Twenty, as follows:

"The court erred in submitting the case to the jury upon the charge given and in rendering judgment on the verdict of the jury finding that the Commission's order was not unjust and unreasonable to appellant, because such action constituted an attempted delegation to a petit jury of the right and power to determine as a matter of law whether such order was repugnant to the Federal Constitution, which is a non-delegable duty of the court, and such verdict and judgment are, therefore, void."

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85

The Court of Civil Appeals erred in refusing to consider and in failing to sustain appellant's Assignment of Error No. 29, presented as Proposition Twenty-nine, as follows:

[fol. 778] "The court erred in failing and refusing to submit to the jury, when seasonably requested by appellant, appellant's specially requested issue No. 10 (Tr. p. 134), asking the jury to answer what was the fair value of the physical operating properties of appellant used and useful to serve Laredo in 1933, and in refusing to give, in connection therewith the definition contained in appellant's specially requested issue No. 9 (Tr. p. 132)."

* * * * * * *

87

The Court of Civil Appeals erred in refusing to consider and in failing to sustain appellant's Assignment of Error No. 31, presented as Proposition Thirty-one, as follows:

"The court erred in refusing to submit to the jury appellant's specially requested issue No. 12 (Tr. p. 138), asking the jury to state what was the fair value of appel-

lant's physical operating properties used and useful in 1932 to serve the City of Laredo."

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89

The Court of Civil Appeals erred in refusing to consider and in failing to sustain appellant's Assignment of Error No. 33, presented as Proposition Thirty-three, as follows:

"The court erred in failing and refusing to submit to the jury the appellant's specially requested issues Nos. 14, [fol. 779] 15, 16 and 17 (Tr. pp. 142, 144, 146, 148), asking the jury to determine reasonable amounts for materials and supplies, cash working capital and going value for appellant's said physical operating properties during the year 1933."

90

The Court of Civil Appeals erred in refusing to consider and in failing to sustain appellant's Assignment of Error No. 34, presented as Proposition Thirty-four, as follows:

"The court erred in refusing and failing to submit the questions of fact suggested and pointed out to the court in appellant's specially requested issues Nos. 14, 15, 16 and 17."

91

The Court of Civil Appeals erred in refusing to consider and in failing to sustain appellant's Assignment of Error No. 35, presented as Proposition Thirty-five, as follows:

"The court erred in failing and refusing to submit to the jury appellant's specially requested issue No. 19 (Tr. p. 152), asking the jury to determine the reasonable cost to appellant of the gas at well mouth which appellant served to Laredo."

92

The Court of Civil Appeals erred in refusing to consider and in failing to sustain appellant's Assignment of Error [fol. 780] No. 36, presented as Proposition Thirty-six, as follows:

"The court erred in failing and refusing to submit to the jury the question of fact suggested and pointed out to the court in appellant's specially requested issue No. 19."

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99

The Court of Civil Appeals erred in refusing to consider and in failing to sustain appellant's Assignment of Error No. 43, presented as Proposition Forty-three, as follows:

"The court erred in failing and refusing to submit to the jury appellant's specially requested issues Nos. 25 and 26 (Tr. pp. 164, 166), asking the jury to answer what percentage of reproduction cost new of depreciable items of distribution system property should be set aside as an annual reserve accrual in 1932 and 1933."

100

The Court of Civil Appeals erred in refusing to consider and in failing to sustain appellant's Assignment of Error No. 44, presented as Proposition Forty-four, as follows:

"The court erred in failing and refusing to submit to the jury the questions of fact suggested and pointed out in appel-[fol. 781] lant's specially requested issues Nos. 25 and 26."

* * * * * * *

103

The Court of Civil Appeals erred in refusing to consider and in failing to sustain appellant's Assignment of Error No. 47, presented as Proposition Forty-seven, as follows:

"Similarly, the court erred in failing and refusing to submit to the jury appellant's specially requested issues Nos. 28, 29, 30 and 31 (Tr. pp. 170, 172, 174, 176), requesting the jury to determine the percentages of reproduction cost new of the depreciable items of the transmission and gathering system properties required to constitute a reasonable annual reserve accrual and the reproduction cost new of depreciable items of said transmission system and gathering system properties."

104

The Court of Civil Appeals erred in refusing to consider and in failing to sustain appellant's Assignment of Error No. 48, presented as Proposition Forty-eight, as follows:

"The court erred in failing and refusing to submit to the jury the questions of fact suggested and pointed out in

appellant's specially requested issues Nos. 28, 29, 30 and 31."

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[fol. 782] 140

The Court of Civil Appeals erred in holding in its opinion (p. 6) that because the Pescadito-Jennings pipe line and West Jennings gathering system were, in the opinion of the Court, "reluctantly included" by the Commission in the fair value of appellant's property found as the basis for prescribing the 55¢ rate, that it was within the judicial power of the Court of Civil Appeals to "pare down unsparingly" the rate base so fixed by the Commission by excluding the value of this property, because the record, viewed in the light most favorable to appellees, shows that the evidence with reference to value and usefulness of this pipe line and gathering system was conflicting, that no finding was made from such conflicting evidence in the lower court, and in this state of the record it was therefore material error for the Court of Civil Appeals to attempt to amend the basic findings of the Commission by such paring down process, which usurped both the functions of the Commission and the lower court, and the judgment of the Court of Civil Appeals based upon such unauthorized action is erroneous.

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[fol. 783] 146

The Court of Civil Appeals erred in upholding as valid the provision of the Commission's 55¢ rate order entered June 13, 1933 making the 55¢ rate retroactive to January 1, 1932, and ordering appellant to refund to the City of Laredo for the benefit of Laredo gas consumers the difference between the amounts collected from January 1, 1932 computed at the 75¢ and the 55¢ rates, and pursuant to such holding, in reforming the judgment of the district court so as to compel appellant by mandatory injunction to make such refunds, because all the evidence introduced at the trial, including the evidence of appellees as well as the evidence of appellant, show that the effect and result of enforcing such order from January 1, 1932 would deprive appellant of a reasonable return and would be unjust, unreasonable and confiscatory, and the Court's judgment

therefore violates appellant's rights under Sec. 1, 14th Amendment, U. S. Constitution, and Secs. 16, 17 and 19, Article I, Constitution of Texas.

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150

It appearing in the record that from January 1, 1932, the appellant had continued to charge the 75¢ rate first under the order of the Commission suspending the Laredo [fol. 784] rate reduction ordinance and then under the restraining and stay orders both of the federal court and the district court, and it appearing that the Commission was without power or jurisdiction to enter any order reducing the existing 75¢ rate, because there was no finding by the Commission that the 75¢ rate yielded more than a reasonable return at the time its order was made effective, and it further appearing at the trial that the Commission's findings on which its order was based conclusively showed that the 75¢ rate was not yielding as much as a reasonable return at the time such order was to take effect and that there was no evidence that such 75¢ rate had yielded as much as a reasonable return from January 1, 1932 to the time of trial, the Court of Civil Appeals erred in rendering judgment holding such order valid and decreeing its enforcement from January 1, 1932, and such judgment therefore violates appellant's rights under Sec. 1, 14th Amendment, U. S. Constitution and Secs. 17 and 19, Article I, Constitution of Texas.

151

The Court of Civil Appeals erred in rendering judgment for appellees compelling appellant, by mandatory injunction, to refund from January 1, 1932 the difference between [fol. 785] the amounts collected computed at the 75¢ and 55¢ rate, because there are no findings by the lower court showing appellant's rate of return in each year from the effective date of such order to support the Court's judgment and to serve as a basis for executing it, and the Court's judgment seeking to enforce such refunds without proper supporting findings violates appellant's rights under Sec. 1, 14th Amendment, U. S. Constitution and Secs. 17 and 19, Article I, Constitution of Texas.

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153

It appearing from the record that since January 1, 1932, appellant has charged the 75¢ rate in Laredo first under the suspension order of the Commission, and then under the injunction and stay orders of the district court of Travis County and the federal court, and it appearing that the legal effect of the judgment of the Court of Civil Appeals is to compel appellant, by mandatory injunction, to refund from January 1, 1932 the difference between amounts collected computed at the 75¢ and the 55¢ rate, the Court of Civil Appeals erred in rendering such judgment without requiring an appropriate determination by the lower court based on findings supported by evidence showing the rate [fol. 786] of return received by appellant at the 75¢ rate in each of the years 1932, 1933, 1934, and down to the date of this Court's judgment in 1935, and the rate of return remaining after refunding the difference between the 75¢ and the 55¢ rate in each of such periods, and the Court's judgment is therefore void because without evidence and findings based on evidence to support it, and violates appellant's rights under Sec. 1, 14th Amendment, U. S. Constitution, and Secs. 17 and 19, Article I, Constitution of Texas.

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157

The Court of Civil Appeals erred in holding that the evidence in this case—showing without dispute that at the time the Commission's 55¢ rate order was to take effect by displacing the existing 75¢ rate and compelling a refund of the difference between the 75¢ and 55¢ rate, the existing 75¢ rate was not yielding as much as a reasonable return and showing that the effect of the order from January 1, 1932 to the date of trial was to leave appellant practically nothing for return,—was not evidence sufficiently clear and satisfactory to raise for determination an issue that the order was unjust, unreasonable or confiscatory, and pur- [fol. 787] suant to such holding, in rendering judgment for appellees, because such holding and judgment deny appellant a trial in accordance with due process and take its property without just compensation, contrary to Sec. 1, 14th Amendment, U. S. Constitution, and Secs. 17 and 19, Article I, Constitution of Texas.

158

The judgment of the Court of Civil Appeals is void, because it was entered not upon but against the undisputed evidence in the record having controlling legal effect, namely, the evidence showing that the Commission did not find and could not have made a finding supported by competent evidence that the 75¢ rate sought to be reduced to 55¢ was yielding as much as a reasonable return by 1932, and the testimony showing that the 75¢ rate had not yielded a reasonable return from January 1, 1932 to the date of trial, and that a reduction of the rate from 75¢ to 55¢ would leave appellant practically nothing for return in 1932 and 1933 upon any lawful basis of computation shown by the trial record, and the Court's judgment therefore violates appellant's rights guaranteed by Sec. 1, 14th Amendment, U. S. Constitution, and Secs. 17 and 19, Article I, Constitution of Texas.

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[fol. 788] 160

It appearing from the record that the Commission, having by its suspension and stay orders authorized appellant to continue charging the 75¢ rate, has employed the average of appellant's operating results from July 1928 through July 1932 as a device to order and enforce a refund of the difference between the 75¢ and 55¢ rate from January 1, 1932 and to impose such 55¢ rate for the future, and under the guise of such device has sought to avoid making any finding that the 75¢ rate was yielding an excessive return by 1932, which finding could not be supported by evidence and which, if it had been made by the Commission, was completely refuted by the evidence at this trial showing appellant's actual experience from the beginning of 1932 to the date of trial, the Court of Civil Appeals erred in upholding the validity of the Commission's order and in decreeing its enforcement, and the Court's judgment therefore violates appellant's rights under Sec. 1, 14th Amendment, U. S. Constitution, Secs. 17 and 19, Article I, Constitution of Texas, and under the statutes and laws of Texas.

161

The Court of Civil Appeals erred in holding that the evidence at the trial was insufficient, as a matter of law,

[fol. 789] to raise for determination an issue that the Commission's 55¢ rate order was in any respect unjust, unreasonable or confiscatory, because, in aid of such holding, the Court employed and gave material weight to the calculations set forth on pages 10-10a of its opinion purporting to show that in each of the five annual periods there stated, after deducting nonrecurring revenues and expenses, appellant's "Net Available Return" was respectively $113,811.92, $116,799.38, $114,405.40, $96,433.68, and $65,469.76, because there is no evidence in the record to support such purported statements of net available return, and such returns as stated involve material errors of law and fact, in that they have been computed without first deducting a reasonable annual accrual to depreciation reserve and after eliminating so-called "questioned" items of operating expenses actually and in good faith incurred by appellant without evidence to support such elimination, and therefore the Court's judgment pursuant to such holding violates appellant's rights under Sec. 1, 14th Amendment, U. S. Constitution, and Secs. 17 and 19, Article I, Constitution of Texas.

162

The Court of Civil Appeals erred in holding that the evidence at the trial was insufficient, as a matter of law, [fol. 790] to raise an issue that the Commission's order was in any respect unjust, unreasonable or confiscatory, because in aid of such holding the Court considered and gave material weight to the purported statements of "Annual Average Net Operating Revenue" set forth on pages 10-10a of the Court's opinion immediately after the purported statements of "Net Available Return" described in paragraph 161 above, because such purported statements of "Annual Average Net Operating Revenue" are without supporting evidence in the record, and their computation and statement involve material error both of fact and law, and such statements are made after eliminating substantial amounts of appellant's operating expenses actually and in good faith incurred without competent evidence to support such elimination, and therefore the Court's judgment pursuant to such holding violates appellant's rights under Sec. 1, 14th Amendment, U. S. Constitution, and Secs. 17 and 19, Article I, Constitution of Texas.

(Prayer, signature of counsel and file endorsement omitted.)

[fol. 791] IN COURT OF CIVIL APPEALS OF TEXAS

Cause 8176

ORDER OVERRULING MOTION FOR REHEARING—January 8, 1936

"United Gas Public Service Company vs. The State of Texas. Appeal from District Court of Travis County. Appellant's Motion for Rehearing. Motion is submitted and overruled."

[fol. 792] IN SUPREME COURT OF TEXAS

Entry on the Application Docket

TRAVIS COUNTY, THIRD DISTRICT

Application No. 21776

UNITED GAS PUBLIC SERVICE COMPANY

vs.

STATE OF TEXAS et al.

Filed February 8, 1936. Refused October 7, 1936
Attorneys: (Names of attorneys omitted.)

[fol. 793] IN SUPREME COURT OF TEXAS

Application No. 21776

UNITED GAS PUBLIC SERVICE COMPANY, Plaintiff-in-Error

vs.

THE STATE OF TEXAS et al., Defendants-in-Error

Petition for Writ of Error—Filed February 8, 1936

ASSIGNMENTS OF ERROR

(Certain Assignments Omitted)

To the Honorable Supreme Court of Texas:

United Gas Public Service Company, a corporation, appellant in cause No. 8176, Court of Civil Appeals for the

Third Supreme Judicial District of Texas, styled United Gas Public Service Company v. State of Texas et al., complains of the State of Texas, Mrs. Miriam A. Ferguson, former Governor of Texas; James V. Allred, former Attorney General and now Governor of the State of Texas; Ernest O. Thompson, Lon A. Smith and C. V. Terrell, members of and comprising the Railroad Commission of Texas; the City of Laredo, a municipal corporation; Albert Martin, its Mayor; Louis Franklin, W. S. (C) Cantrell, E. S. Russell, T. Leyendecker, H. Cluck, J. Henry, B. Salinas, Chas. [fol. 794] Walker and Dick Misener, members of its city governing body, or their successors in office; M. J. Raymond, its city attorney, and William McCraw, now Attorney General of Texas, and respectfully petitions this Honorable Court to issue its writ of error in this cause directed to the said Court of Civil Appeals, to the end that this case may be removed from said Court to this Court, where the record and proceedings herein may be fully reviewed and the judgment of the Court of Civil Appeals rendered herein may be reversed and judgment rendered for this plaintiff in error, or else that the case may be remanded for a new trial; and so that plaintiff in error may be accorded any and all other relief to which it may be entitled under the law.

* * * * * * *

No. 1

The Court of Civil Appeals erred in refusing to sustain and in overruling assignment of error No. 1, reading as follows:

"The court erred in denying appellant's motion for peremptory instruction when timely made at the conclusion of all testimony, and in entering judgment for appellees, because the evidence in the record most favorable to appellees showed, as a matter of law, that the existing $0.75 rate had not yielded a net return of 7 per cent per annum from Janu- [fol. 795] ary 1, 1932, down to the date of the trial, and that therefore the action of the Commission in prescribing and in seeking to impose and enforce the lower $0.55 rate in Laredo was beyond the power of the Commission."

No. 2

The Court of Civil Appeals erred in refusing to sustain and in overruling assignment of error No. 4, reading as follows:

"The court erred in overruling appellant's motion for judgment non obstante verdicto, and in refusing to enter judgment for appellant, because the evidence in the record most favorable to appellees showed, as a matter of law, that the existing $0.75 rate had not yielded a net return of 7 per cent per annum from January 1,1932, down to the date of the trial, and that therefore the action of the Commission in seeking to impose and enforce the lower $0.55 rate in Laredo was beyond the power of the Commission."

No. 3

The Court of Civil Appeals erred in refusing to sustain and in overruling assignment of error No. 8, reading as follows:

"The court erred in entering judgment upon the verdict of the jury herein, because the verdict of the jury could not control the court in applying the law to the facts and declaring the result, and because the evidence in the record most favor-
[fol. 796] able to appellees showed, as a matter of law, that at the date of the trial and since January 1, 1932, the existing $0.75 rate in Laredo did not yield a reasonable return on fair value, and hence there was no evidence to support the verdict and the judgment of the court based thereon."

No. 4

The Court of Civil Appeals erred in overruling and in refusing to sustain assignments of error No. 3 reading as follows:

"The court erred in overruling appellant's said motion for peremptory instruction, and in entering judgment for appellees, because the evidence in the record most favorable to appellees showed, as a matter of law, that from January 1, 1932, to the date of the suit and trial, the enforcement of the Commission's said order and the imposition of the $0.55 rate prescribed therein would compel appellant to serve gas in Laredo at rates not sufficient to yield a reasonable return on the fair value of appellant's property, and would deny ap-

pellant the equal protection of the laws and deprive appellant of its property without due process of law and without due course of the law of the land, and hence said order and rate were unenforceable, because unjust, unreasonable and confiscatory,''

the overruling of such assignment and the judgment of the Court of Civil Appeals based thereon being in violation of appellant's constitutional rights under Sec. 1, 14th Amend-
[fol. 797] ment, U. S. Constitution, and Secs. 17 and 19, Article I, Constitution of Texas.

No. 5

The Court of Civil Appeals erred in overruling and in refusing to sustain assignment of error No. 6, reading as follows:

''The court erred in overruling said appellant's motion for judgment non obstante veredicto, and in refusing to enter judgment for appellant, because the evidence in the record most favorable to appellees showed, as a matter of law, that the enforcement of the Commission's said order and the imposition of said $0.55 rate prescribed therein would compel appellant to serve gas in Laredo from January 1, 1932, down to the date of the suit and trial, at rates not sufficient to yield a reasonable return on the fair value of appellant's property and would deny appellant the equal protection of the laws and deprive appellant of its property without due process of law and without due course of the law of the land, and hence such order and rate were unenforceable because unjust, unreasonable, and confiscatory'',

the overruling of such assignment and the judgment of the Court of Civil Appeals based thereon being in violation of appellant's constitutional rights under Sec. 1, 14th Amendment, U. S. Constitution, and Secs. 17 and 19, Article I, Constitution of Texas.

[fol. 798] No. 6

The Court of Civil Appeals erred in overruling and in refusing to sustain assignment of error No. 7, reading as follows:

''The court erred in entering judgment upon the verdict of the jury herein, because said verdict is without support in

the evidence, and is contrary to the great and overwhelming weight of the evidence, in that the evidence in the record most favorable to appellees showed, as a matter of law, that the enforcement of the $0.55 rate prescribed in the Commission's said order would result in confiscation of appellant's property from the effective date of such order down to the date of the suit and trial,"

the overruling of such assignment and the judgment of the Court of Civil Appeals based thereon being in violation of appellant's constitutional rights under Sec. 1, 14th Amendment, U. S. Constitution, and Secs. 17 and 19, Article I, Constitution of Texas.

No. 7

The Court of Civil Appeals erred in overruling and in refusing to sustain assignment of error No. 9 reading as follows:

"The court erred in entering its judgment dated April [fol. 799] 24, 1934, decreeing the Commission's said order valid and permanently enjoining appellant from thereafter charging rates in excess of the $0.55 rate prescribed therein, because the evidence in the record most favorable to appellees showed, as a matter of law, that the effect of enforcing said rate at the date of the trial and from January 1, 1932, would be confiscation of appellant's property, and the court's judgment seeking to prescribe and impose such $0.55 rate from the date of the decree until changed by the Commission or City, was beyond the judicial power of the court,"

the overruling of such assignment and the judgment of the Court of Civil Appeals based thereon being in violation of appellant's constitutional rights under Sec. 1, 14th Amendment, U. S. Constitution, and Secs. 17 and 19, Article I, Constitution of Texas.

No. 8

The Court of Civil Appeals erred in finding that in 1933, the 75¢ rate yielded defendant a net return of more than 11 per cent, and that the enforcement of the Commission's order would have left a net return of more than 7 per cent, such finding being contrary to the undisputed evidence and being wholly without supporting evidence in the record.

[fol. 800] No. 9

The Court of Civil Appeals erred in finding that in 1933 the 75¢ rate yielded defendant a net return of more than 11 per cent, and that the enforcement of the Commission's order would have left a net return of more than 7 per cent, because such finding is wholly without supporting evidence, and is based on an error of law, in that the court stated such rates of return upon $700,000 instead of upon the valuation of $885,000 fixed by the Commission, such $700,000 being selected by the court from conflicting testimony at the trial below upon which no finding had been made.

No. 10

The Court of Civil Appeals erred in overruling and in failing to sustain assignment of error No. 3, reading as follows:

"The court erred in overruling appellant's said motion for peremptory instruction, and in entering judgment for appellees, because the undisputed evidence in the record showed that the $0.55 rate prescribed in the Commission's said order of June 13, 1933, was fixed upon the assumption that the appellant's revenues in Laredo from and after [fol. 801] January 1, 1932, would be equal to the average of its said revenues for the period which commenced July 1, 1928, and which ended July 31, 1932, and that such assumption was contrary to the facts, and erroneous, and hence said $0.55 rate could not be enforced, because unlawfully made."

No. 11

The Court of Civil Appeals erred in overruling and failing to sustain assignment of error No. 5, reading as follows:

"The court erred in overruling appellant's motion for judgment non obstante verdicto, and in refusing to enter judgment for appellant, because the undisputed evidence in the record showed that the $0.55 rate prescribed in Commission's said order of June 13, 1933, was fixed upon the assumption that appellant's revenues in Laredo from and after January 1, 1932, would be equal to the average of its said revenues for the period which commenced July 1, 1928, and which ended July 31, 1932, and that such assumption was contrary to the facts, and erroneous, and hence said $0.55 rate could not be enforced because unlawfully made."

No. 12

The Court of Civil Appeals erred in overruling and failing to sustain assignment of error No. 10, reading as follows:

"The court erred in entering its judgment dated April 24, 1934, decreeing the Commission's said order valid and permanently enjoining appellant from thereafter charging rates in Laredo in excess of the $0.55 rate prescribed therein, [fol. 802] because the undisputed evidence in the record showed that said $0.55 rate was unlawfully made upon the erroneous assumption that appellant's revenues in Laredo from and after January 1, 1932, would be equal to the average of such revenues for the period which commenced July 1, 1928, and which ended July 31, 1932, and hence the judgment of the court seeking to impose and enforce such rate from the date of the decree was unsupported by evidence and beyond the judicial power of the court,"

the overruling of such assignment and the judgment of the Court of Civil Appeals based thereon being in violation of appellant's constitutional rights under Sec. 1, Fourteenth Amendment, U. S. Constitution, and Secs. 17 and 19, Article I, Constitution of Texas.

No. 13

The Court of Civil Appeals erred in holding that the evidence failed, as a matter of law, to raise an issue as to the validity of the Commission's order, because one of the material grounds for such holding was the controlling weight given by the Court of Civil Appeals to the average of operating revenues for a four-year period which commenced July, 1928, and ended July, 1932, the undisputed evidence showing that average revenues, operating and economic conditions in such four-year period were entirely different [fol. 803] from, wholly dissimilar to and no proper criterion of the revenues and conditions over which the Commission was asserting jurisdiction and to which its order applied.

No. 14

The Court of Civil Appeals erred in holding that the evidence failed, as a matter of law, to raise an issue as to the validity of the Commission's order, because the legal effect resulting from the controlling weight given to the average of revenues for the four-year period commencing

July, 1928, was to employ the higher earnings of that prior period to support the imposition of a confiscatory order and rate at and after January 1, 1932.

No. 15

The Court of Civil Appeals erred in holding that the method employed by the Commission in making the order had no bearing upon and failed to raise any issue as to the validity of the Commission's order, since the evidence showed that such method resulted in the assumption, contrary to the undisputed facts, that the revenues to which the order applied were equal to the greatly higher average revenues for a four-year period commencing July 1, 1928, [fol. 804] and that the legal effect of such method was to employ past revenues not within the asserted jurisdiction of the Commission to deny defendant just compensation for the use of its property from and after January 1, 1932.

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No. 17

The Commission by its order having asserted jurisdiction and attempted to exert its power over defendant's revenues and rates at and after January 1, 1932, by requiring such revenues to be refunded and such rates reduced, the Commission's order and the judgments of the District Court and the Court of Civil Appeals were each void for lack of a supported finding that the revenues and rates to which the order applied exceeded the standard of reasonableness prescribed by the Commission, and the Court of Civil Appeals erred in failing to so declare.

No. 18

The Court of Civil Appeals erred in enforcing the Commission's order, because such order was made by determining the reasonableness of defendant's returns from the 75-cent rate in the years 1928, 1929, 1930, on the basis of fair value of defendant's property appraised and fixed at 1932 price levels.

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[fol. 805]

No. 21

The Court of Civil Appeals erred in enforcing the Commission's order, it appearing from the undisputed evidence that the revenues and rates to which the order applied yielded substantially less than a reasonable return, and that enforcement of the order would result in confiscation.

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No. 23

The Court of Civil Appeals erred in affirming the judgment of the district court in the absence of findings in the district court of the ultimate issues of fact upon which the questions of confiscation depended.

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No. 26

The Court of Civil Appeals erred in reforming the judgment of the lower court so as to require defendant to refund the difference between the 75¢ rate and the 55¢ rate in 1932 and 1933, because the undisputed evidence showed that compliance with such order would deny defendant just compensation for the use of its property in those years.

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No. 28

The Court of Civil Appeals erred in reforming and affirm-
[fol. 806] ing the judgment below in the absence of findings in the district court of the facts upon which defendant's defenses of confiscation were based, including the defenses arising from the application of the order to defendant's demonstrated experience since the order's effective date, the Commission's unlawful under-valuation of defendant's property and the Commission's unlawful understatement of operating expenses and rates of return and depreciation reserve accrual.

No. 29

The Court of Civil Appeals erred in refusing to consider and sustain assignment of error No. 11, reading as follows:

"The Texas statutes make submission to the jury upon special issues mandatory if requested by either party to a

jury trial, and it was error for the lower court to deny appellant's seasonable request for submission on special issues."

No. 30

The Court of Civil Appeals erred in refusing to consider and sustain assignment of error No. 12, reading as follows:

"Request for submission on special issues having been made, the court erred in submitting the case to the jury on definition of terms and Special Issue No. 1 as follows:

" 'Special Issue No. 1: Do you find that the order of [fol. 807] the Railroad Commission of Texas bearing date June 13, 1933, providing for a fifty-five cent gas rate to residential consumers within the city of Laredo, Texas, under the facts introduced in evidence before you, is unreasonable and unjust as to defendant, United Gas Public Service Company. Answer this question "Yes" or "No" ' because the charge did not constitute submission of the case to the jury upon the special issues, as made by the pleadings and proof, in compliance with the Texas statutes."

No. 31

The Court of Civil Appeals erred in refusing to consider and sustain assignment of error No. 19, reading as follows:

"The court erred in submitting the case to the jury upon the charge given over appellant's objection thereto seasonably made that upon the record in such case, appellant was thereby deprived of the opportunity of knowing the grounds for the jury's verdict and for any judgment of the court based thereon, and was prevented from reserving for review in the courts of appeal, State and Federal, questions as to the existence and sufficiency of evidence to support the verdict and judgment."

No. 32

The Court of Civil Appeals erred in refusing to consider and sustain assignment of error No. 20, reading as follows:

"The court erred in submitting the case to the jury upon the charge given and in rendering judgment on the verdict of the jury finding that the Commission's order was not [fol. 808] unjust and unreasonable to appellant, because such action constituted an attempted delegation to a petit

jury of the right and power to determine as a matter of law whether such order was repugnant to the Federal Constitution, which is a non-delegable duty of the court, and such verdict and judgment are, therefore, void."

No. 33

The Court of Civil Appeals erred in reforming and affirming the judgment below, in the absence of findings in the record of proceedings in the district court of the facts essential to an adequate and complete appellate review of the federal constitutional questions.

* * * * * * *

No. 35

The Court of Civil Appeals erred in entering judgment decreeing the enforcement of the Commission's order, by holding in effect that it was the duty of the courts of Texas to uphold such order if there was substantial evidence to support it.

No. 36

The Court of Civil Appeals erred in entering judgment decreeing the enforcement of the Commission's order, by holding in effect that the presence of substantial evidence to support the order rendered all evidence offered against [fol. 809] the validity of the order insufficient to raise an issue or to require the conflicts to be determined, thus denying defendant a trial in accordance with the independent judgment of the courts upon the facts.

No. 37

The Court of Civil Appeals, having construed the law applicable to this trial as requiring the order to be upheld if there was substantial evidence to support it, and as rendering all other evidence legally insufficient to raise an issue of validity, erred in failing to declare the order void because the trial provided for the determination of constitutional questions as thus construed was not in accordance with due process.

* * * * * * *

No. 39

The Court of Civil Appeals erred in enforcing the Commission's order upon the purported holding that the evidence was insufficient, as a matter of law, to raise an issue as to the order's validity, when the Court's opinion, taken as a whole, shows that the Court's action was not based on the holding stated above, but upon the theory that the order must be upheld if there was substantial evidence to support it, and by entirely disregarding all other evidence.

[fol. 810]

No. 40

The Court of Civil Appeals erred in enforcing the Commission's order upon the holding that the order must be upheld if there was substantial evidence to support it, because defendant was thereby denied a trial and remedy to prevent confiscation upon the independent judgment of the Court exercised in the determination of the facts to which the order applied and which had transpired since the Commission record closed.

No. 41

The Court of Civil Appeals erred in upholding the Commission's order by testing its validity upon a materially different property value and measure of operating expenses than had been fixed by the Commission as bases for making the order and determining the reasonableness of rates.

No. 42

The Court of Civil Appeals erred in selecting from the testimony at the trial the lowest figure for property value presented by plaintiffs' witness, and in employing such figure to test the validity of the order, because such testimony was material and admissible only for the purpose of showing whether the $885,000 rate base was unlawfully [fol. 811] fixed and required the order to be set aside—and was not admissible or effective to supply the Court with power to prescribe a new lower rate base.

* * * * * * *

No. 45

The Court of Civil Appeals erred in entering judgment enforcing the Commission's order, because although the

record contained full and direct evidence of the actual facts and conditions to which the order applied, the Court nevertheless weighed the presumption in favor of the order as evidence in entering its judgment.

No. 46

The Court of Civil Appeals erred, in entering its judgment herein, in failing to give controlling weight and legal effect to the direct evidence of the actual facts already in existence to which the order applied.

No. 47

The Court of Civil Appeals erred in entering judgment enforcing the Commission's order from January 1, 1932, by holding that the undisputed evidence showing that the enforcement of the order would leave defendant a return of less than 2 per cent for the two years following the order's effective date, when measured by the Commis- [fol. 812] sion's standards, failed to raise so much as an issue that the order was in any respect unjust or unreasonable, or that its enforcement would be confiscatory.

No. 48

The Court of Civil Appeals erred in entering judgment enforcing the Commission's order by holding that, because defendant had not complied with the order, the undisputed evidence showing that the enforcement of the order from its effective date to the date of trial would deny defendant any return whatsoever on more than $625,000 of the $885,000 rate base fixed by the Commission, was insufficient to raise even an issue that the order was in any respect unjust or unreasonable, or that its enforcement would be confiscatory.

No. 49

The Court of Civil Appeals erred in holding that defendant was required to comply with the Commission's order for a period of years before defendant could invoke the judicial power of the courts of Texas to hold the order invalid, even though the undisputed evidence showed that the higher existing rates, which were in effect during the period regulated by the order, had failed by a wide margin to yield a reasonable return, because such holding and the

[fol. 813] Court's judgment pursuant thereto denied defendant a judicial remedy to prevent the confiscation resulting from the enforcement of the order.

No. 50

The Court of Civil Appeals erred in holding that defendant could not raise any issue as to the validity of the Commission's order or prevent its enforcement until defendant had complied with such order for such period of years as would constitute a test, and in entering judgment enforcing the order upon such holding, because defendant was thereby denied a determination of its defenses of constitutional invalidity because of the Commission's arbitrary and unlawful undervaluation of defendant's property, elimination of operating expenses, and understatement of reasonable rates of return and reserve accrual. Compliance with the order would shed no light on these issues.

No. 51

The Court of Civil Appeals erred in entering judgment enforcing the Commission's order by holding that the evidence adduced was insufficient, as a matter of law, to even raise an issue as to the validity of the order, because the evidence primarily employed by the Court in reaching this [fol. 814] conclusion was the evidence introduced by plaintiffs showing operating results from July 1928 through July 1932, defendant's testimony being completely ignored.

* * * * * * *

No. 56

The Court of Civil Appeals erred in finding that the 75c rate yielded a net return of 11 per cent in 1933, and that the enforcement of the Commission's order would still leave defendant in excess of a 7 per cent return in that year, because there was no evidence to support the finding.

* * * * * * *

No. 58

The Court of Civil Appeals erred in finding in effect that figures called "Net Available Return" on pages 10-10a of the Court's opinion were in fact the amounts which were

received as return and as compensation for the use of defendant's property during the years shown by said calculation, after deducting nonrecurring items, because such finding is erroneous and misleading, in that the so-called "Net Available Return" was stated before deducting the [fol. 815] annual accrual to the depreciation reserve and and by eliminating as "Questioned Items of Operating Expense" certain operating expenses actually incurred without competent evidence to support such elimination.

No. 59

The Court of Civil Appeals erred in finding in effect that the result of enforcing the Commission's order was shown by the "Annual Rates of Return" set forth under subsections 1-4 of such calculations, because such calculations unlawfully eliminate operating expenses actually incurred, are based in material part on a rate base greatly less than that found by the Commission, and conceal, rather than disclose, the revenues and rates of return to which the order actually applied, by averaging in other revenues not affected by the order.

* * * * * * *

No. 62

The Court of Civil Appeals erred in not holding that the jury verdict was a nullity, requiring the judgment based thereon to be set aside and the case remanded for another trial, because the verdict was not a determination of the disputed questions of fact on special issues, but was the answer of the jury upon the law of the case.

[fol. 816] No. 63

The Court of Civil Appeals erred in refusing to consider and in failing to sustain appellant's assignment of error No. 13, reading as follows:

"The court erred in giving the charge to the jury over appellant's objection thereto made upon the ground that such charge, and particularly Special Issue No. 1 thereof, was multifarious."

* * * * * * *

No. 66

The Court of Civil Appeals erred in refusing to pass upon and in failing to sustain assignments of error Nos. 21-34, presenting error in the refusal of the trial court to submit to the jury special issues for determination of the ultimate facts with reference to the fair value of defendant's property used and useful to serve Laredo.

No. 67

The Court of Civil Appeals erred in refusing to pass upon and in failing to sustain assignments of error Nos. 36-48, presenting error in the refusal of the trial court to submit to the jury special issues for determination of the ultimate facts with respect to a proper annual accrual to the depreciation reserve and the proper bases therefor.

* * * * * * *

[fol. 817]

No. 71

The Court of Civil Appeals erred in entering judgment herein based in material part upon the holding that the undisputed evidence required the elimination from the $885,000 rate base fixed by the Commission an item of $135,000 representing the value of the Pescadito-Jennings pipe line and gathering system, because such action was unauthorized and the finding upon which the same was based was contrary to the evidence.

* * * * * * *

No. 73

The Court of Civil Appeals erred in entering its judgment upon the holding that confiscation as a result of the enforcement of the order in 1933 was insufficient to raise an issue of invalidity, because the Court completely ignored the confiscation resulting from the enforcement of the order in 1932, which was an issue in the case of equal import to confiscation in 1933.

No. 74

The Court of Civil Appeals erred in entering judgment October 30, 1935, enforcing the order in toto, the Court holding in effect that since the case was tried at such a time that

[fol. 818] only actual operating results for 1932 and 1933 could, in the nature of things, be shown by direct evidence, the evidence as to 1932 and 1933 covered too short a period for an issue of invalidity to be raised thereby, because a judgment enforcing the order was not the proper legal result of such holding, even if correct, but rather a judgment of reversal and remand so that evidence for a longer period of time, which evidence had become available, could be placed in the record.

(Statements, summaries of argument, prayer, signature of counsel and file endorsement omitted.)

[fol. 819] IN SUPREME COURT OF TEXAS

App. No. 21776

[Title omitted]

ORDER DENYING WRIT OF ERROR—October 7, 1936

This day came on to be heard the application of plaintiff in error for a writ of error to the Court of Civil Appeals for the Third District and the same having been duly considered, it is ordered that the application be refused; that applicant, United Gas Public Service Company, pay all costs incurred herein.

(No opinion entered.)

[fol. 820] IN SUPREME COURT OF TEXAS

Application No. 21776

[Title omitted]

MOTION FOR REHEARING—Filed October 22, 1936

To the Honorable Supreme Court of Texas:

United Gas Public Service Company, plaintiff in error, herein called "company", respectfully moves this Honorable Court to reconsider and rehear its petition for writ of

error filed on the 7th day of February, 1936, and upon so doing, to set aside its order denying said petition entered the 7th day of October, 1936, and instead, to grant said petition and issue its writ of error in this cause directed to the Honorable Court of Civil Appeals for the Third Supreme Judicial District of Texas, at Austin, Texas, to the end that this case may be removed to this Honorable Court, and be reviewed by it as provided by law in such cases. For convenience, the defendants iff error are called "Commission".

As its grounds for this motion, plaintiff in error respectfully shows:

1

The State Supreme Court erred in sustaining the judgment of the intermediate appellate court because the appli- [fol. 821] cation of the order of the company's experience involved in its enforcement available at the time of trial was shown by all of the evidence to result in denying the company more than $10,086.25, as compensation for the use of its property in 1932 (being a return of 1-1/10 per cent on $885,000) and to deny more than $18,408.39 as compensation for the use of its property in 1933 (being a return of 2-1/10 per cent on $885,000), the company being entitled under the terms of the order to a net annual return of 7 per cent of $885,000, an annual net compensation of $61,950, and therefore the judgment enforcing the order is void because it imposes confiscation, in violation of the company's rights under Section 1, Fourteenth Amendment, United States Constitution.

2

The State Supreme Court erred in sustaining the judgment of the intermediate appellate court, because such judgment was based in material part on an unsupported conclusion of the intermediate appellate court that enforcement of the order in 1933 would leave the company a net return of more than 7 per cent on $700,000, said conclusion being contrary to all of the evidence in the record, and the judg- [fol. 822] ment based thereon being void as imposing confiscation, in violation of Section 1, Fourteenth Amendment, United States Constitution.

3

The State Supreme Court erred in sustaining the judgment of the intermediate appellate court because in such

judgment improper legal effect was given to the general presumption of validity indulged in favor of the Commission's order on account of its character as a legislative act, by deciding the issue of confiscation upon said presumption and not upon the actual facts to which the order applied, contrary to Section 1, Fourteenth Amendment, United States Constitution.

4

The State Supreme Court erred in sustaining the judgment of the intermediate appellate court, because such judgment was based in material part upon a calculated figure which represented the average of 1933 net revenues at the 75 cent rate with the purported net revenues at this rate during four prior fiscal years, which years included a period commencing July, 1928 and ending July, 1932, which calculated figure was a fictitious and arbitrary basis for determining confiscation in direct conflict with the result [fol. 823] of enforcing the order upon the actual facts to which the order applied, the judgment being a denial of due process of law in the determination of confiscation and because imposing confiscation, contrary to Section 1, Fourteenth Amendment, United States Constitution.

5

The State Supreme Court erred in sustaining the judgment of the intermediate appellate court, because there was eliminated from the computation of net revenues in the four prior fiscal years very substantial outlays for operating expenses incurred in furnishing the gas which produced such revenues, without any competent evidence in the record to support such elimination, which action aggravated the unlawful result of the calculated revenue basis and widened the margin of conflict between this fictitious figure and the application of the order to the actual revenues in fact involved in the order's enforcement, thus denying determination of confiscation and imposing confiscation contrary to due process, in violation of Section 1, Fourteenth Amendment, United States Constitution.

6

The State Supreme Court erred in sustaining the judgment of the intermediate appellate court, because the cal-

[fol. 824] culated figure representing the average of 1933 net revenues and revenues for prior fiscal years was stated as a rate of return on $700,000, thus further aggravating the unlawful result of employing the fictitious revenue calculations and further widening the conflict between the arbitrary results of this calculation and the application of the order itself to the actual revenues which are in fact involved in the enforcement of the order, being a denial of a lawful determination of confiscation and the imposition of confiscation contrary to due process, in violation of Section 1, Fourteenth Amendment, United States Constitution.

7

The State Supreme Court erred in sustaining the judgment of the intermediate appellate court, because the record appropriately raised by pleading and supported by proof the company's claim of confiscation from the Commission's unlawful undervaluation of the company's property at $885,000, the company being thereby denied a determination of this issue of confiscation in the exercise of an independent judgment based on a consideration of all pertinent facts, contrary to Section 1, Fourteenth Amendment, United States Constitution.

8

The State Supreme Court erred in sustaining the judg-
[fol. 825] ment of the intermediate appellate court, because there was appropriately raised by pleadings and supported by proof the company's claim of confiscation from the Commission's understatement of a proper annual depreciation reserve accrual, the company being denied a determination of this issue in the exercise of independent judgment, contrary to Section 1, Fourteenth Amendment, United States Constitution.

9

The State Supreme Court erred in sustaining the judgment of the intermediate appellate court, because such judgment was based in material part upon the conclusion that the evidence showing the facts to which the order actually applied was insufficient, as a matter of law, to show confiscation, in that the company had not complied with the

order by making the prescribed refunds and charging the 55 cent rate, this conclusion being contrary to the undisputed evidence that the enforcement of the order would not only deny the company practically all compensation but that the 75 cent rate had failed by a substantial margin to yield a reasonable net return on $885,000 during the period regulated by the order, such judgment denying the company a judicial remedy to prevent confiscation, con- [fol. 826] trary to Section 1, Fourteenth Amendment, United States Constitution.

10

The State Supreme Court erred in sustaining the judgment of the intermediate appellate court because the scope of the trial and appellate review which was afforded the company in the courts of the state did not provide a lawful judicial hearing as to confiscation in the exercise of independent judgment as to both law and facts and therefore the Commission's order and the judgment enforcing it are each void because in conflict with Section 1, Fourteenth Amendment, United States Constitution.

11

The State Supreme Court erred in sustaining that part of the judgment of the intermediate appellate court enforcing the refund provisions of the Commission's order, because such judgment was entered and sustained without judicial findings essential to a lawful determination that the Company would be allowed just compensation after making such refunds, contrary to the company's right to due process of law safeguarded by Section 1, Fourteenth Amendment, United States Constitution.

12

The State Supreme Court erred in sustaining that part [fol. 827] of the judgment of the intermediate appellate court which permanently enjoined the company from charging more than the 55 cent rate until the Commission's order was modified or set aside, because the judgment was not confined to the facts actually involved in the enforcement of the order and shown by the record, but was made to speak of and adjudicate the validity of the order under

unknown future conditions, contrary to the company's rights under Section 1, Fourteenth Amendment, United States Constitution.

13

The State Supreme Court erred in sustaining the judgment of the intermediate appellate court holding the Commission's order valid and decreeing its enforcement, because the Commission, as a prerequisite to its order reducing the 75 cent rate and requiring refunds from the revenues produced thereby, made no finding that such rate or revenues were unreasonable and the absence of such finding and the record at the trial showing that such a finding, if made, would be without supporting evidence, operate to deny company a lawful determination of its rights in accordance with due process of law, contrary to Section 1, Fourteenth Amendment, United States Constitution.

14

As additional grounds for this motion, the company adopts the Assignments of Error set forth in its Petition [fol. 828] for Writ of Error, being First-Seventy-fourth Assignments of Error, both inclusive. These Assignments are not repeated in this motion because they are already before this Honorable Court in printed form in said petition.

(Prayer and signature of counsel omitted.)

IN SUPREME COURT OF TEXAS

Mo. No. 12899

[Title omitted]

ORDER OVERRULING MOTION FOR REHEARING—December 30, 1936

For rehearing of App. No. 21776. Overruled.

(No opinion entered.)

[fol. 829] [File endorsement omitted]

[fol. 830] IN SUPREME COURT OF THE UNITED STATES

[Title omitted]

PRÆCIPE FOR TRANSCRIPT—Filed February 1, 1937

To the Clerk of the Supreme Court of Texas:

You are hereby requested to make and certify a true copy of the following from the record of the proceedings of the Supreme Court of Texas upon the application of United Gas Public Service Company for writ of error directed to the Court of Civil Appeals for the Third Supreme Judicial District of Texas in cause No. 8176:

[fol. 831] 1. Statement from your records showing the date that said petition for writ of error and record were received and filed, and that said proceeding became No. 21,776, upon Application Docket of the Supreme Court of Texas.

2. The copies of the orders of the Court of Civil Appeals accompanying said record.

3. From the petition for writ of error of United Gas Public Service Company, the opening paragraph, and the following numbered assignments of error: 1-15, 17-18, 21, 23, 26, 28-33, 35-37, 39-42, 45-51, 56, 58-59, 62-63, 66-67, 71, 73-74.

4. The order of the Supreme Court of Texas entered October 7, 1936 refusing said application for writ of error, with your endorsement showing that no opinion was entered in connection therewith.

5. From the motion for rehearing filed by United Gas Public Service Company, the opening paragraph, the paragraphs stating the grounds of the motion, and the prayer, with your endorsement showing the date of filing and that said motion became No. 12,899 on the Motion Docket of the Supreme Court of Texas.

6. The order of the Supreme Court of Texas entered December 30, 1936, overruling said motion No. 12,899, with [fols. 832-833] your endorsement showing that no opinion was entered in connection therewith.

7. This præcipe, and notice and acknowledgement of service thereof.

8. Your certificate, including therein your statement as to when the record was returned to the Court of Civil Appeals.

Dated: 30th day of January, 1937.

Jno. P. Bullington, F. G. Coates, Counsel for Appellant.

[fol. 834] Orders certified from the Court of Civil Appeals, Third District, in connection with the application for writ of error by United Gas Public Service Company, also the appellees' acknowledgment of service of this præcipe, omitted from this transcript, because the orders and acknowledgment of service have been included in the transcript certified by the clerk of said Court of Civil Appeals, to the Supreme Court of the United States.

[fol. 835] CLERK'S CERTIFICATE

I, S. A. Philquist, Clerk of the Supreme Court of Texas, do hereby certify that the above 42 pages contain true and correct copies of entries on the application docket of the Supreme Court of Texas, on the motion docket of said Court and on the application fee book of said Court in Application No. 21776, styled United Gas Public Service Company, Plaintiff in Error, vs. State of Texas, et al., Defendants in Error, from Travis County, Third District, and that the portions of the petition for writ of error and motion for rehearing of said Plaintiff in Error are true and correct copies from the originals thereof.

I further certify that on the 30th day of December, 1936, the record, statement of facts, briefs, and all other papers in said cause (except the petition for writ of error, the reply thereto, the motion for rehearing and the orders of the Court of Civil Appeals) were by me returned to Hon. R. E. Moore, the Clerk of the Court of Civil Appeals, for the Third Supreme Judicial District.

In Testimony Whereof, witness my hand and the seal of the Supreme Court of Texas, this the 19th day of February, 1937.

S. A. Philquist, Clerk, by J. P. Byrne, Deputy. (Seal Supreme Court of the State of Texas.)

[fol. 836] [File endorsement omitted]

[fol. 837] IN COURT OF CIVIL APPEALS FOR THE THIRD SUPREME JUDICIAL DISTRICT OF TEXAS, AT AUSTIN, TEXAS

[Title omitted]

ORDER OF THE CHIEF JUSTICE OF THE COURT OF CIVIL APPEALS DENYING PETITION FOR APPEAL TO THE SUPREME COURT OF THE UNITED STATES—Filed January 7, 1937

On the 7th day of January, 1937, came appellant, United Gas Public Service Company, by its counsel and presented its petition for appeal to the Supreme Court of the United States, its assignment of errors, its prayer for reversal, its statement as to jurisdiction, and forms for an order allowing the appeal, citation, cost bond, and stay and supersedeas order, all in connection with said petition for appeal.

It appearing that on October 30, 1935, this Court of Civil Appeals, in cause No. 8176, entered judgment upholding the validity of, against all appellant's claims that said order was repugnant to the due process and equal protection [fols. 838-839] clauses of the Fourteenth Amendment to the Constitution of the United States, and enforcing by injunction a certain gas rate reduction and refund order entered, on June 13, 1933, by the Railroad Commission of Texas, which order prescribes a new lower gas rate and refund of collections at the higher existing rate in respect of domestic gas service in the city of Laredo, Texas; and,

It appearing that, following this Court's denial of appellant's motion for rehearing on January 8, 1936, said cause has been pending on application for writ of error to the Supreme Court of Texas, which application was denied October 6, 1936, and motion for rehearing thereon overruled December 30, 1936. And it further appearing that the record in said cause has been returned to and is now in the possession of this Court of Civil Appeals and that this Court of Civil Appeals is the proper court to issue mandate herein, but that such mandate has not yet been issued.

Said petition for appeal and said other papers presented therewith being duly considered, I, James W. McClendon, Chief Justice of said Court of Civil Appeals for the Third

Supreme Judicial District of Texas, decline to allow said appeal.

Dated this 7th day of January, 1937.

James W. McClendon, Chief Justice, Court of Civil Appeals for the Third Supreme Judicial District of Texas. (Seal Court of Civil Appeals of the State of Texas.)

[fol. 840] [File endorsement omitted]

[fol. 841] IN SUPREME COURT OF THE UNITED STATES

[Title omitted]

PRÆCIPE FOR TRANSCRIPT—Filed February 1, 1937

To the Clerk of the Court of Civil Appeals for the Third Supreme Judicial District of Texas:

You are hereby requested to make a transcript of record to be filed in the Supreme Court of the United States pursuant to an order of appeal allowed on January 16, 1937, in the above entitled cause by Mr. Justice Cardozo, and to include in such transcript of record the following from the record on file in this cause:

[fol. 842] A

From the Transcript certified on June 29, 1934 by Geo. H. Templin, District Clerk, Travis County, Texas, setting forth proceedings in Cause No. 52,774 on the docket of the Fifty-third District Court of Travis County, Texas, and filed in this Court of Civil Appeals on June 21, 1934, the following:

	Page of Transcript
1. The plaintiffs' original petition, filed in the district court of Travis County, Texas by the Railroad Commission and others on July 26, 1933	2– 12
2. From the ordinance of the city of Laredo dated December 31, 1931, which is attached to said plaintiffs' original petition as Exhibit A, the following:	
(a) The ordaining clause, which commences "Now, Therefore, Be It Or-	

	Page of Transcript
dained * * *'' and Section 1 (a) down to, but not including, Section 1 (b)	14
(b) All of Sections 2, 3 and 5 of this ordinance	15
[fol. 843] 3. The entire opinion and the entire rate and refund order of the Railroad Commission, both entered June 13, 1933, which opinion and order are one instrument and are attached to the plaintiffs' original petition as Exhibit B thereof	17– 38
4. All of the stay order of the 53rd district court of Travis County, entered on July 26, 1933, staying enforcement of said order of the Commission last above mentioned	39– 40
5. From the Stay Order of the Federal Court filed August 7, 1934, the following:	
(a) All of the first paragraph commencing ''On this the first day of August, 1933 * * *''	41
(b) From the first paragraph on p. 44 of the Transcript, which paragraph commences ''And the defendants herein having * * *'' down to the end of the order on p. 47 of the Transcript	44– 47
6. From Defendant's First Amended Original Answer filed March 5, 1934, the following:	
From the section containing demurrers, [fol. 844] which is headed ''A'', and commences on p. 48 of the Transcript, paragraph 2, including subsections (a) and (c) of this paragraph, but omitting subsection (b) thereof; also par. 4	48– 49
All of Paragraphs I and II, which commence on p. 56 of the Transcript	56– 61
Paragraph III, subsections (a) and (b)	61
Paragraph VIII, subsection (b) which commences with the last line of p. 65 of the Transcript, but omitting subsections (a) and (c) of this paragraph	65– 66

	Page of Transcript
Paragraph VIII, commencing at the top of page 67 and extending through the third line on page 70 of the Transcript. (Note: There are two paragraphs numbered VIII, and it is the second such paragraph that is called for here)	67– 70
Paragraphs IX and X	70– 74
Paragraphs XI and XII	73– 77
The prayer and verification	77– 78
7. The first three paragraphs of the District Court's Order of March 7, 1934 overruling [fol. 845] Demurrers and Exceptions	96
8. From Defendant's Motion to Discharge the Jury, the following:	
(a) The first two paragraphs on p. 98 of the Transcript	98
(b) From the paragraph on page 98 of the Transcript commencing "The submission of any issue * * *" to the end of the motion on p. 99 of the Transcript	98– 99
(c) The order overruling this motion noted thereon and appearing at the bottome of p. 99 of the Transcript	99
9. Defendant's motion for instructed verdict and order overruling this motion noted thereon	101–102
10. Defendant's motion for judgment denying enforcement of the Commission's order for 1932, and order overruling motion	103–104
11. Similar motion and order as to 1933	107–108

[fol. 846] B

From the Statement of Facts setting forth the testimony given and the exhibits offered and received in evidence at the trial of said Cause No. 52,774 in the 53rd District Court of Travis County, Texas, such Statement of Facts consisting of nine separately bound volumes, the first four volumes numbered I, II, III and IV, and the last five volumes designated A, B, C, D and E, which Statement of Facts was filed, after final approval, by Geo. H. Templin, District Clerk, on the 8th day of June, 1934, and was filed in this

Court of Civil Appeals on the 21st day of June, 1934, the following, and in the following order:

(Note.—In making this portion of the Transcript, please omit all unnecessary matter, including all objections to testimony, all comments and arguments on such objections, all rulings thereon and all the exceptions taken to such rulings. At the point of each such omission, write "Plaintiffs' (defendant's) objection overruled," where the objection was overruled and exception taken, or write "Objection made, sustained, and offer of proof made by plaintiffs (defendant)," where the objection was sustained, and of-
[fol. 847] fer of proof made. Please omit repetition of questions or answers where the record shows that the repetition was because the witness or the court did not understand the question, or counsel or the court did not understand the answer, also unanswered questions and like matter. Please confine the portions of the record on the pages designated to the questions and answers directly bearing upon the particular ultimate fact about which the witness is testifying).

Plaintiffs' Testimony

1. From the testimony of C. F. Petet, a witness for plaintiffs, appearing on pp. 11-14, S. F. Vol. I, those parts showing he was a witness called by plaintiffs, that he was Secretary of the Railroad Commission of Texas, that he identifies a certified copy of the opinion and order of the Commission entered in the proceeding referred to therein, and that such copy is offered and received in evidence as Plaintiffs' Exhibit No. 3. Please note at this point in the record that such Exhibit No. 3 is the same identical instrument that was attached to plaintiffs' original petition as Exhibit B thereof, which instrument has already been included as pp. —— thereof in the transcript you are certifying.

[fol. 848] 2. From p. 14, S. F. Vol. I, the stipulation appearing at the top of the page, and from the same page, statement that plaintiffs rest.

Defendant's Testimony

3. From the testimony of Henry Beck, a witness for defendant the following from S. F. Vol. I:

(a) All of p. 15.

(b) The last question on p. 16 and answer.

(c) The first question and its answer and the second question on p. 17.

(d) The answer on p. 19 which extends to, but does not include, the last three lines on p. 20.

4. From the testimony of H. E. Womack, a witness for defendant, the following:

(a) From S. F. Vol. I, p. 22, the first two questions and their answers on said p. 22.

(b) From S. F. Vol. I, that part of p. 23 commencing with "Q. Are you a certified public accountant?", and including the remainder of p. 23, all of pp. 24, 25, and 26; the remainder of the question and the first answer on p. 27; [fol. 849] the notation on p. 27 showing Defendant's Exhibit 1 received in evidence, and the first question and answer following this notation.

(c) Pages 2002-2006 of S. F. Vol. IV, being the summary sheet and the summarized supporting sheets of Defendant's Exhibit 1, the Laredo operating statement for 1932.

(d) From S. F., Vol. I, commencing with the last question on p. through the answer to the first question on p. 30; from "Q. Now, are these general expenses * * *" through "as that is concerned" on p. 32; from the first question on p. 34 through the answer "A. Yes, there is," on p. 35; commencing with the last question on p. 35, pp. 36, 37 and down to and including the last answer on p. 38.

(e) From S. F. Vol. I, the last question and answer on p. 50 and all of p. 51 down to and including the notation showing introduction of Defendant's Exhibit 3.

(f) From S. F. Vol. IV, all of pp. 2065-2069, being the summary sheet and the summarized supporting sheets of Defendant's Exhibit 3, the Laredo operating statement for 1933.

[fol. 850] (g) From S. F. Vol. I, the last question on p. 52 and extending from that point through "A. $38,932.60" on p. 53; also the statement of counsel on p. 59 offering Defendant's Exhibit 5, and the record showing such exhibit received in evidence.

(h) From S. F. Vol. IV, pp. 2109-2115, both inclusive, being defendant's exhibit 5 showing comparison of revenues, including those used as the basis for making the order and those to which the order applies, and segregating certain nonrecurring revenues)

(i) From S. F. Vol. I, the last two questions and their answers on p. 62; Beginning with first question commencing "Q. And have you made" down through the answer "A. Yes, I have" on p. 66; commencing with the first question, all of p. 67, all of pp. 68, 69, and p. 70 down through the [fol. 851] last answer reading "A. I have;" from p. 71 counsel's offer of Defendant's Exhibit 6; from p. 75 counsel's offer of said exhibit. From S. F. Vol. IV, pp. 2117-2120, include Defendant's Exhibit 6. Beginning with the last question on p. 75 of Vol. I, S. F., include pp. 76, 77, and all of p. 78, except the last question. Beginning with question which commences "Q. Tie that figure back * * *" on p. 80, include the remainder of p. 80, pp. 81, 82, except repetition of the same question and remarks of the Court and counsel; include all of pp. 83 and 84; include that part of p. 87 commencing with the second question down through the answer "A. Yes, they are" on p. 87.

(j) From S. F. Vol. I, commence with second question from bottom of p. 152, and include down to end of the answer on p. 153, which was carried over from p. 152; the last complete question and answer on p. 178; the first [fol. 852] answer and the question and answer following on p. 186; all of p. 190, commencing with first question.

(k) Comencing with second question from bottom of p. 223, S. F. Vol. I, include pp. 224 and 225; commence with p. 255 and include down through the third answer on p. 259.

5. From the deposition of E. B. Neiswanger, a witness for defendant, the following from the direct interrogatories and answers thereto:

	Page of S. F. Vol. I
No. 1 Answer only	94
No. 4 Answer only; Nos. 5, 7 and 8 and answers to each	95-96
No. 9-d and answer; No. 11 and answer: Nos. 12 and 13, answers only; No. 14 and answer	97-101
No. 15 (a) Answer only; No. 16 and answer; No. 16 (d) and answer, including the letter on pp. 104-105	102-105

6. From the testimony of H. E. Randall, a witness for defendant the following:

[fol. 853] (a) The three questions and answers on p. 111, S. F. Vol. I, showing name of witness and that he is manager of industrial sales for United Gas Public Service Company.

(b) Beginning on p. 112 S. F. Vol. I with the question commencing "Q. Mr. Randall, do you know * * *" include the remainder of p. 112 and pp. 113, 114, 115 and 116, omitting the remarks and objections of counsel, and omitting the remarks of, but not omitting the questions asked by, the Court; commence with second question from bottom p. 130, include to bottom p. 132.

7. From the testimony of W. W. Stein, a witness for defendant, the following from S. F. Vol. I:

(a) Pages 312-319, including the last answer on 319, inserting after notation showing introduction of defendant's exhibit 7 on p. 314, a copy of said exhibit.

(b) Beginning with first question on p. 321, include the remainder of p. 321, all of pp. 322, 323, 324 and 325 and p. 326 down to and including the answer "A. I do."

[fol. 854] (c) Beginning on p. 333 with the question which commences "Q. Now, Mr. Stein, based on your past knowledge * * *" include the remainder of p. 333, all of p. 334, and p. 335 down to and including the second answer on that page reading "A. It does."

8. From the testimony of M. A. Abernathy, a witness for defendant, the following:

(a) S. F. Vol. I, pp. 418, 419, and 420, excluding objections, the last question and answer on p. 422, pp. 423-428, both inclusive.

(b) Commence with the second question from bottom of p. 436, and include remainder of that part; S. F. Vol. IV, pp. 2129, 2132, 2133, 2136 from defendant's Exhibit 8; include from p. 437 down to second question from bottom of p. 442; from p. 445 to last question on p. 447.

(c) On p. 477 the question beginning "Now, you testified about * * *" and the answer thereto; commence with second question p. 478, and include through the third from last answer on that page; also the last four questions and answers on p. 479, and down through answer "A. No, that would be impossible" on p. 480.

[fol. 855] 9. From the testimony of A. D. Greene, a witness for defendant, the following:

(a) From S. F. Vol. I, include pp. 487-501, both inclusive and that part of p. 502 down to and including the second answer on p. 502, omitting objections, exceptions and remarks.

(b) From S. F. Vol. IV, include those parts of defendant's Exhibit 9 which comprise p. 2141, being the general valuation summary sheet, p. 2143, the valuation summary sheet for the distribution properties, p. 2264, the valuation summary sheet for transmission properties, and p. 2393, and the valuation summary sheet for field gathering properties.

(NOTE.—The remainder of this exhibit consists of detailed inventory sheets, showing extension of unit prices, etc. upon the individual items of each property account. Indicate the pages omitted.)

[fol. 856] (c) From S. F. Vol. I, commence with the last question on page 520, and include that question, all of pp. 521, 523, both inclusive, and all of p. 524, except the last question on p. 524; p. 535, the first three questions and their answers on p. 536; begin with first question on p. 539, include remainder of that page, and page 541, down to the offer of Defendant's Exhibit 10, omitting all matter except direct questions and answers eliciting information from the witness.

(d) From S. F. Vol. IV, pp. 2444-2451, include typed portions of Defendant's Exhibit 10.

(e) From S. F. Vol. I, commence on p. 541 following counsel's offer of Defendant's Exhibit No. 10, include the remainder of said p. 541, and pages 542-553, both inclusive, and p. 554, down to the point showing that Defendant's Exhibit 12 was received in evidence, omitting all remarks, objections, exceptions, etc.

(f) From S. F. Vol. IV, include p. 2458, being the general valuation summary sheet of Defendant's Exhibit 12.

[fol. 857] (g) From S. F. Vol. I, include p. 631 and the remainder of the direct examination of the witness, A. D. Greene, which is concluded on p. 632.

(h) From S. F. Vol. IV, p. 2453-2455 include typed portions of Defendant's Exhibit 11.

(i) Beginning with the question on p. 735 of Vol. I, S. F. which commences "Now, Mr. Greene, you may have an-

swered, include the remainder of p. 735, all of pp. 736, 737, 738 and 739, omitting remarks, objections, etc.

10. From the testimony of P. McDonald Biddison, a witness for defendant, include the following from Vol. I of the Statement of Facts:

(a) Commence with the first question asked this witness on p. 574, include the remainder of that page, and pp. 575-578, both inclusive, and that part of p. 579 ending with the answer "A. I am."

(b) Begin with the question on p. 582 which commences "Have you examined the inventory * * *", include the remainder of p. 582, all of pp. 583-590.

[fol. 858] (c) All of p. 591, 592 and down to the first question on p. 593; on p. 594, include the question which commences "Q. And what conclusion * * *", and the answer to said question, being the last answer on p. 594.

11. From the testimony of H. L. Dickerson, a witness for defendant, the following from Vol. I of the Statement of Facts:

(a) The first three questions and the first three answers on p. 660.

(b) Commencing with the first question on p. 676, the remainder of said page, including the part of the answer to the last question on p. 676, which answer is completed on p. 677.

(c) The last answer on p. 679, all of pp. 680 and 681, and down to the first question on p. 682; include the question on p. 687 which commences "Q. Mr. Dickerson, have you made studies * * *" and the answer to said question; include the answer on p. 688 which commences "A. The cost to * * *"; and the last two questions and their answers of Mr. Dickerson's direct examination.

[fol. 859] 12. From Vol. I, S. F., the offer of counsel on p. 754, commencing "The defendant now offers in evidence, the remainder of p. 754, and all of pp. 755 and 756.

13. From Defendant's Exhibit 13, being the record in the rate proceeding before the Railroad Commission, the following:

(a) From S. F. Vol. A, p. 359, commence with question beginning "Q. Taking into consideration the effect * * *"

include the remainder of questions and answers on that page; commence with the third line from the bottom of p. 362, include remainder of that page, all of pp. 363 and 364, include the answer on p. 365 beginning "A. I do not think it is equitable * * *" and the remainder of p. 365, and down to the first question on p. 366.

(b) From S. F. Vol. C, include p. 1765, being the summary sheet from appellant's reproduction cost appraisal introduced as Exhibit 1 in the Commission hearing.

(c) From S. F. Vol. C, include p. 2082, being the summary sheet of the Laredo operating statement for the 12 months [fol. 860] ended July, 1932, introduced by appellant at the Commission hearing.

(d) From S. F. Vol. A, p. 663, commence with first question asked the witness Womack, down to the answer "A. That's it" on p. 664; commence on said p. 664 with the question beginning "Q. Now, the apportionment of that general expense. * * *" include the remainder of that page, down through the last answer on p. 665.

(e) From S. F. Vol. D, include pp. 2168, 2171, 2196, 2297, being the valuation summary sheets from the appraisal introduced at the Commission hearing as City's Exhibit A, also p. 2417, the correction sheet to said exhibit.

(f) From S. F. Vol. B, commencing on p. 1026 (Vol. II, p. 10-11) with questions asked the witness Elrod to test his qualifications and the two questions and answers on the following page; commencing with the last question on p. 1120 (Vol. II, p. 104-113) down through the first answer on p. 1129; on p. 1133 (Vol. II, 117) commence with second ques-[fol. 861] tion and include down to the first statement by the Commissioner; on p. 1134 (Vol. II, 118) the question by the Commissioner as to the existence of going value, and the answer thereto; from S. F. Vol. B, p. 1198, commence with second question from bottom and include through the second answer on p. 1199. From S. F. Vol. E, include p. 2464, City's Exhibit I, and p. 2476, City's Exhibit M.

(g) From S. F. Vol. D, pp. 2450 and 2459, being pages 1 and 10 respectively of the City's Exhibit L at the Commission hearing.

(h) Commencing with the last question on p. 1493, S. F. Vol. B (Vol. II, 476-478) include p. 1494 and down to the last question on p. 1495; commence with second question from bottom of p. 1537 (Vol. II, p. 520-526) continue to the

first question on p. 1543; commencing with third answer from bottom of p. 1579 (Vol. II, p. 562) down to second question on the following page.

(i) From S. F. Vol. B, commence with testimony of W. W. Stein, recalled, on p. 1686 (Vol. II, p. 669) down to second question from bottom of p. 1692 (Vol. II, p. 675); question [fol. 862] by Commissioner Thompson on p. 1731 (Vol. II, 714) and the entire page next following; commence on p. 1734 (Vol. II, p. 717) with testimony of M. A. Abernathy and include to the third question from the bottom of p. 1737 (Vol. II, p. 720); commencing on p. 1750 (Vol. II, p. 733) with testimony of H. E. Womack and include down to the portion of p. 1757 (Vol. II, p. 740) which deals with the time of filing briefs.

Plaintiffs' Rebuttal Testimony

14. From the testimony of Leon O. Lewis, a witness for plaintiffs, the following:

(a) From S. F. Vol. I, all of p. 771 and the first question and answer on p. 772; from p. 778, counsel's offer of Plaintiffs' Exhibit 4, the notation showing such exhibit received in evidence, and the remainder of said p. 778, and the first line on p. 779.

(b) From S. F. Vol. III, pp. 1771 and 1772 of plaintiffs' Exhibit 4.

[fol. 863] (c) Commencing with the last question on p. 779, S. F. Vol. I, all questions and answers on pp. 780, 781, 782, 786, 787, 788, 789, 790, 791, 792.

Plaintiff's Rebuttal Testimony

15. From the testimony of J. P. Kinney, a witness for plaintiffs, the following:

(a) S. F. Vol. I, p. 798, except the last question on p. 798; from p. 800, beginning with the question which commences "Q. Mr. Kinney, when you first began the work • • •", include the remainder of p. 800, all of pp. 801-805, both inclusive, and p. 806, down to and including the answer which ends "• • • in setting up their depreciation."

(b) From S. F. Vol. II, p. 908, commencing with last question on that page, down to last question on cross examination on p. 911, excluding repetition.

16. From the testimony of Leon O. Lewis, resumed, the following:

(a) Commence with fourth question on p. 819, Vol. I, S. F., include remainder of p. 819, 820 and 821, down to notation showing plaintiff's exhibit 8 offered and received, [fol. 864] and the three answers and intervening questions following such notation.

(b) From S. F. Vol. III, pp. 1786, 1790 and 1794-1797, from plaintiff's exhibit 8.

(c) From p. 822 of S. F. Vol. I the question which commences "Q. That page 1 shows • • •" and the answer to said question; beginning with the last question on p. 823 of S. F. Vol. I include all p. 824, and p. 825 down to the answer "A. Before depreciation and income taxes, $65,524.16."

(d) Beginning with last question on p. 826, S. F. Vol. I, include pp. 827, 828 and first line on p. 829; beginning with second question on p. 831, include remainder of that page and all questions and answers on pp. 833, 834, 835, 836, 837, 838 down to the answer "A. It does not." on p. 838.

(e) From S. F. Vol. II, p. 857, down to last question on that page; include last question and answer on p. 858, pp. 859, 860 and 861, down to the last answer on that page; [fol. 865] commence with last question on p. 865, include p. 866 and down to the end of the first sentence on p. 867; include last 3 lines of p. 867, and the first two sentences on p. 868; beginning with last question on p. 868, include p. 869.

(f) Commencing with the second question from the bottom of p. 930, S. F. Vol. II, include 931 and down to the second question from the bottom on p. 932; commence with the second question from the top on p. 934, include 935, 936, 937, 938 and 939 down to last question on p. 939, excluding repetition, objections, etc.; include fourth question on p. 945; From first answer on p. 946, 947, 948, excluding duplications; 949, commencing with second question, 950, 951, down to the first question; begin with the last answer on p. 961, include 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, through the first answer on p. 972.

(g) Beginning with last question on p. 1004, S. F. Vol. II, include pp. 1005, 1006, 1007 down to the last question [fol. 866] on that page; begin with second question from

bottom of p. 1008, include 1009, 1010, the first line of p. 1011, the last question on p. 1012, and p. 1013, down to the last question on that p. 1013; the second question from the bottom of p. 1014, and the answer thereto; the second question from the top of p. 1018 and the answer thereto; all of p. 1020.

(h) Commencing with the second question on p. 1044, S. F. Vol. II, include remainder of that page, p. 1045 and the first two questions on p. 1046; the questions on p. 1077, and the answers thereto on p. 1078; pp. 1081, 1082, 1083, and the first question and its answer on p. 1084, excluding objections and remarks.

(i) From S. F. Vol. II, p. 1087 and the first line on p. 1088; commencing with the first question on p. 1091, down to the last question on p. 1092.

17. From the testimony of H. E. Elrod, a witness for plaintiffs, the following from S. F. Vol. II:

(a) Pages 1096 to 1104, down to defendant's objection on p. 1104 (summarize defendant's objections on pp. 1104-1109, and show objections overruled).

[fol. 867] (b) From S. F. Vol. III, pp. 1800-1803, both inclusive, being the general valuation summaries, and p. 1806, valuation summary of transmission property and p. 1865, valuation summary of distribution property.

(c) From S. F. Vol. II, commence with last question on p. 1110, include p. 1111, and down through the first answer on p. 1112; commence with third question from bottom of p. 1116, p. 1117, and down through the third answer on p. 1118; commence with third question from the bottom of p. 1184, down through the second answer on p. 1185; all completed questions and answers on p. 1198 and 1199; begin with second question on p. 1219 and include questions and answers on p. 1220; begin with the last line on p. 1230, all pages 1231, 1232, 1233, all complete questions and answers on p. 1234; begin with second question on p. 1236, and include down through the second answer from the bottom of p. 1237, begin with the second question on p. 1238, include 1239 down through the third answer on that page; [fol. 868] begin with third question from bottom of p. 1239, p. 1240 and the first answer on p. 1241; begin with the third question on p. 1246 and include down to the third question from the bottom of p. 1247; beginning with last

question on p. 1248, include all questions and answers on p. 1249; page 1256, through the third answer on that page.

(d) All questions and answers on p. 1363; the second question from the bottom on p. 1365 and its answer; begin with third question on p. 1366, pp. 1367, 1368 and through the second answer on p. 1369; the second and third questions and their answers on p. 1378; commence with second question on p. 1383, p. 1384, and the first answer on p. 1385; from the last question on p. 1385, through the second answer on p. 1386; begin with the question on p. 1388 and include through the second answer on p. 1389; the first question on p. 1390 and its answer; begin with the second question from the bottom of p. 1392 and include through the second answer on p. 1393.

[fol. 869] (e) Commence with first question of p. 1397 and include all questions and answers on that page and the following page which are not unintelligible references to maps; commence with last question on p. 1399, include pp. 1400, 1401 and p. 1403 through the third answer on that page; pp. 1410, 1411, down to second question from bottom of p. 1412; begin with second question from bottom of p. 1413 down to last question on p. 1414; begin with second question from the bottom of p. 1421, down to last question on p. 1422.

(f) Begin with third question from the bottom of p. 1424, 1425, 1426, 1427, 1428, 1429, through the first answer on p. 1430; the last question on p. 1430 and the first line on p. 1431 and p. 1433 and down to the end of the second answer on p. 1434; p. 1438 down to court's remark on that page; begin with the last question on p. 1438, p. 1439 and through the third answer on p. 1440; begin with the last question on p. 1440 and include down to the second question from the bottom of p. 1441; begin with the last [fol. 870] question on p. 1443, pp. 1444, 1445 and down to "A. You will get the same answer" on p. 1446; begin with the last question on p. 1450 and include through the first answer on p. 1451.

(g) From S. F. Vol. III, pp. 1983-1986, being Plaintiff's Exhibit 12.

(h) From S. F. Vol. II, the second and third questions and their answers on p. 1607.

18. The following testimony of Albert Martin, Mayor of Laredo, a witness for plaintiffs, in S. F. Vol. II:

(a) Page 1259, down to second answer on p. 1260; commence with last question on p. 1273, pp. 1274, 1275, 1276, down through the third answer on p. 1277; commence with last question on p. 1278, down to end of p. 1279.

(b) Begin with third question from the bottom of p. 1478 and include through the first answer on p. 1479; begin with last question on p. 1479 and include through the second answer on p. 1480; the first question and its answer on p. 1481; the first two questions and their answers on p. 1482; begin with the third question on p. 1484, 1485 and [fol. 871] down through the second answer from the bottom of p. 1486; commencing with the second question on p. 1487 include through the last answer on that page; from the first question on p. 1493, through the second answer on p. 1494.

Defendant's Surrebuttal Testimony

19. From S. F. Vol. II, the following of the testimony of J. V. Strange, a witness for defendant:

(a) The heading and third answer on p. 1542; the second question from the bottom of p. 1543 and its answer; beginning with the fourth question on p. 1544, include pp. 1545, the first question and its answer on p. 1546; commence with the second question from the bottom of p. 1546, include p. 1547, p. 1548, excluding repetition, p. 1549, p. 1550, excluding remarks and noting plaintiffs' objection, p. 1551, p. 1552, down to the last question. The last two questions and answers on p. 1553, p. 1554, pp. 1555 and 1556, excluding repetition, p. 1557, down through the first answer on p. 1558.

[fol. 872] (b) Commence with the last question on p. 1558, include p. 1559 and down to the last question on p. 1560; begin with the third question on p. 1566, and include through the fourth answer on p. 1567, excluding repetition; begin with the fourth answer on p. 1571, excluding remarks, and include the remainder of that page, and down through the third answer on p. 1572; begin with the third question from the bottom of p. 1574, include the remainder of that page; Begin with the third question on p. 1575, include the remainder of that page.

20. From the testimony of A. D. Greene, recalled, the following from S. F. Vol. II:

(a) Begin with the last question on p. 1582, and include to the bottom of p. 1583.

21. From the testimony of John S. Ivy, a witness for defendant, the following from S. F. Vol. II:

(a) His testimony on p. 1634; from the second question on p. 1636, p. 1637 and through the third answer from the bottom of p. 1638; on p. 1639, from the third question through the second answer from the bottom; begin with the [fol. 873] second question on p. 1640, p. 1641, p. 1642 and 1643, excluding repetition and remarks, p. 1644, p. 1645 to the second question from the bottom, p. 1646, excluding remarks; p. 1647, through the second answer on that page.

(b) Commence with the second question from the bottom of p. 1648, excluding incomplete statements and remarks, to the second question from the bottom of p. 1649, correcting the obvious typographical errors and excluding repetition; commence with the third question from the bottom of p. 1651, include pp. 1652, 1653 and through the second answer on p. 1654; the first question and answer on p. 1655; the last question on p. 1655 and the first answer on p. 1656; p. 1657, excluding remarks.

22. From the testimony of R. H. Hargrove, a witness for defendant, the following from S. F. Vol. II:

(a) The first, third, fifth and sixth questions and their answers on p. 1658; p. 1659, 1660, and through the last answer on p. 1661; from the second question through the next to last answer on p. 1662; p. 1663, excluding repetition [fol. 874] and remarks, down to the next to last answer; begin with the last question on p. 1664, 1665, and through the first answer on p. 1666.

23. From the testimony of P. M. Biddison, recalled, the following from S. F. Vol. II:

(a) Commence with last question on p. 1667 and include through the third answer on p. 1668; the last question commencing on p. 1669, from the last answer on p. 1670, pp. 1671, 1672, 1673 and down through the second answer on p. 1674; commence with the last question on p. 1675,

p. 1676, excluding remarks, and through the second answer on p. 1677.

24. From the testimony of H. E. Womack, recalled, the following from S. F. Vol. II:

(a) Commencing with second question on p. 1587, remainder of the direct examination, ending on p. 1588.

25. From the testimony of J. A. Phillips, a witness for defendant, the following from S. F. Vol. II:

(a) Pages 1685 and 1686.

(b) From first question on p. 1688, pp. 1689, 1690, 1691, 1692, 1693, excluding remarks, down through the first answer on p. 1694.

[fol. 875]

C

From the Transcript of proceedings in Cause No. 52,774, 53rd District Court, Travis County, Texas (which Transcript is more fully described on page 2 of this præcipe), the following:

	Page of Transcript
1. Motion of defendant to submit case on special issues and order thereon	113-114
2. Defendant's specially requested issue No. 10 (Please note in the transcript of record you are hereby requested to prepare that defendant's motion to submit the issue, and the court's action overruling the motion and refusing to submit the issue, were repeated in the same language in the case of each special issue requested)	133-134
3. Defendant's specially requested issues 12, 14, 15, 16, 17, 18, 19, 24, 25, 28, 30, with all formal parts omitted	138, 142, 144, 146, 148 150, 162, 164, 170, 174

[fol. 876]

4. Charge of the District Court to the jury filed April 5, 1934	203-206
5. The following portions of defendant's exceptions and objections to the court's charge filed April 5, 1934:	
(a) The heading	207

	Page of Transcript
(b) Lines 1-13 of Par. I on p. 208, ending with "upon this defendant's rights"	208
(c) Lines 1-6 of Par. II on p. 209 ending with "of the Court as to the law"	209
(d) Paragraphs III, IV and XI	210-211, 217-219
(e) The heading (p. 223) and subdivisions "f" and "g" of Paragraph XIII, appearing on pp. 225-226	225-226
(f) The first section of paragraph XVI, ending with "as found by the jury" on page 229	229
6. The District Court's order overruling all of defendant's exceptions to the Court's charge	231-232
[fol. 877]	
7. The verdict of the jury, filed April 10, 1934	233
8. All of defendant's motion for judgment notwithstanding the verdict filed April 12, 1934, except paragraph I thereof (p. 234), and except the acceptance of notice (p. 235-236)	234-236
9. The second paragraph of the order overruling such motion, commencing "It is, therefore, ordered" and ending "in all things overruled"	237
10. The final judgment entered April 24, 1934, omitting therefrom the charge of the Court and the verdict of the jury, noting at the point of omission that the charge and verdict as previously shown in the record were repeated verbatim in the judgments)	245, 249-251
11. The moving clause (p. 252) and the following numbered paragraphs of defendant's amended motion for new trial, filed April 24, 1934:	
[fol. 878]	
Paragraph 2	252-253
Paragraph 3	253
Paragraph 9	256
Paragraph 13	258

	Page of Transcript
Paragraph 15	258
Paragraph 26	260-261
Paragraph 28	261-262
Paragraph 50	273
Paragraph 51	273-274
Paragraph 52	274
Paragraph 59	277
Paragraph 73	281
Paragraph 78	284
Paragraphs 82-114 (Please don't quote these paragraphs, but simply certify that they assign as error the Court's refusal to submit certain issues, identifying the issues)	286-297
Paragraph 171	335-336
Paragraph 234	398
Prayer to motion for new trial	399

[fol. 879]

12. The second paragraph of the order of the District Court entered on April 24, 1934 overruling defendant's amended motion for new trial 406

D

1. An appropriate notation of the date this case was docketed in the Court of Civil Appeals, showing its style and number in said Court.

2. From the original brief of appellant United Gas Public Service Company filed in cause No. 8176 in the Court of Civil Appeals, the following numbered propositions contained in said brief, and expressly adopted therein as said appellant's similarly numbered assignments of error in said Court: 1-14; 18-20; 29-36; 41-44; 47-48. Please show by endorsement the date this brief was filed.

3. The opinion of the Court of Civil Appeals entered October 30, 1935.

4. The order or judgment of the Court of Civil Appeals reforming and affirming the judgment below.

5. From the motion for rehearing filed by said appellant [fol. 880] in said Court of Civil Appeals on November 14,

1935, the moving clause, the paragraphs set out below and the prayer, with your endorsement showing date said motion was filed in the Court of Civil Appeals:

Paragraphs 1, 2, 3, 4, 5, 6, 7, 9, 10, 11, 14, 15, 18, 19, 20, 21, 25, 28, 29, 30, 31, 32, 33, 35, 37, 40, 42, 43, 44, 45, 49-51, 57-58, 66-69, 73-75, 85, 87, 89-92, 99-100, 103, 104, 146, 150, 151, 153, 157, 158, 160-162.

6. The order of the Court of Civil Appeals, entered January 8, 1936, overruling said motion for rehearing, with your endorsement showing the date said motion was submitted and overruled and that no opinion was entered upon the overruling of said motion.

7. The appropriate notation from your docket showing that the appellant's petition for writ of error to the Supreme Court of Texas was received and filed by you February 7, 1936, and that said petition, with the entire record, were transmitted to the Supreme Court of Texas on February 8, 1936.

8. Copies of all orders certified to the Supreme Court of Texas in connection with said application for writ of error, except those which may have been designated above.

[fol. 881] E

1. Include the transcript of proceedings in the Supreme Court of Texas in this cause, which transcript appellant has requested from the Clerk of said Court.

F

1. Docket entries of the Court of Civil Appeals in said cause No. 8176, whereon there has been noted:

(a) Denial of appellant's petition for writ of error by the Supreme Court of Texas on October 7, 1936.

(b) Overruling of appellant's motion for rehearing by the Supreme Court of Texas on December 30, 1936.

(c) Date the record was returned by the Supreme Court of Texas to said Court of Civil Appeals, with appropriate notation showing that said record is now in possession of said Court.

2. The order of the Honorable Chief Justice of the Court of Civil Appeals denying appellant's petition for appeal to the Supreme Court of the United States, such order being filed in said Court January 7, 1937.

3. This præcipe, and acknowledgment of service thereof by appellees' counsel, with date of filing endorsed thereon.

[fol. 882] G

1. The entries upon the docket of the Court of Civil Appeals showing the date of filing appellant's petition for appeal to the Supreme Court of the United States, and the date of filing all other papers which have been lodged with the Court of Civil Appeals in connection therewith.

2. The original of appellant's petition for appeal, assignment of errors and prayer for reversal and statement as to jurisdiction, each dated January 15, 1937; the original of the order allowing appeal and the citation, each signed by Mr. Justice Cardozo under date of January 16, 1937; the original of appellant's cost bond; the original of the notice and statement required by par. 2, Rule 12 of the Rules of the Supreme Court of the United States, together with acknowledgment of service upon appellees' counsel of said petition, assignment, prayer, jurisdictional statement, order, notice and statement, and citation.

3. The original of any statement or motion filed by appellees in connection with this appeal, with dates of filing endorsed thereon.

[fols. 883-884] 5. Your separate certificate as to the papers designated by this section G of this præcipe, and in addition thereto, your general certificate as to the papers designated by the entire præcipe.

Dated 30th day of January, 1937.

Jno. P. Bullington, F. G. Coates, Counsel for Appellant.

[fol. 885] [File endorsement omitted]

[fol. 886] In Supreme Court of the United States

[Title omitted]

Acknowledgment of Service—Filed February 1, 1937

To Alfred M. Scott, Assistant Attorney General of Texas; Edward H. Lange, Counsel for Appellees:

Pursuant to Rule 10, paragraph 2, of the Rules of the Supreme Court of the United States, you are hereby served with one copy for each of you of appellant's præcipe to the

Clerk of the Court of Civil Appeals for the Third Supreme Judicial District of Texas and to the Clerk of the Supreme Court of Texas, designating portions of the record to be [fol. 887] incorporated in the transcript to be made and certified to the Supreme Court of the United States in this appeal.

Your attention is specifically directed to appellant's assignment of errors and statement as to jurisdiction, wherein appellant has asserted, and will contend upon this appeal (1) that all the evidence in the record most favorable to the order shows that, upon the Commission's findings as to rate base and depreciation reserve allowance, both the 75 cent and 55 cent rates were confiscatory from and after January 1, 1932; (2) that the finding by the Court of Civil Appeals of a net return under the Commission's order of more than 7 per cent of $700,000 for 1933 is contrary to the undisputed evidence in the record; and (3) that there is no competent evidence in the record to support the elimination of the so-called questionable items of operating expense for the four fiscal years ended July 1932. Appellant's counsel have designated the parts of the record which they believe will constitute affirmative support for these claims. This is for your information when you prepare your præcipe.

Dated 30th day of January, 1937.

Jno. P. Bullington, F. G. Coates, Counsel for Appellant.

[fols. 888-889] Service of a copy of this notice and of a copy of each of the præcipes stated therein is acknowledged.

This 1st day of February, 1937.

Alfred M. Scott, Asst. Atty. Gen.; Edw. H. Lange, Counsel for Appellees.

[fol. 890] CLERK'S CERTIFICATE

I, R. E. Moore, Clerk of the Court of Civil Appeals for the Third Supreme Judicial District of Texas, do hereby certify that the following documents, appearing on pages 891 to 1059, hereof:

1. Petition for appeal, assignment of errors and prayer for reversal,

2. Statement as to jurisdiction,
3. Order allowing appeal,
4. Citation,
5. Notice required under Rule 12,
6. Acknowledgment of service of notice,
7. Acknowledgment of service of citation,
8. Appellant's cost bond,

are the originals filed in this Court by appellant, in Cause No. 8176, styled United Gas Public Service Company, Appellant, vs. The State of Texas, et al., Appellees.

To certify which, Witness my hand and seal of said Court at office in Austin, Texas, this 27th day of February, A. D. 1937.

R. E. Moore, Clerk. (Seal Court of Civil Appeals of the State of Texas.)

[fols. 891-893] [File endorsement omitted]

IN SUPREME COURT OF THE UNITED STATES

[Title omitted]

Petition for Appeal, Assignment of Errors and Prayer for Reversal—Filed January 20, 1937

Submitted in Connection with Allowance of Appeal—Benjamin N. Cardozo

[fol. 894] PETITION FOR APPEAL

Considering itself aggrieved by the final judgment in the above entitled cause, entered on October 30, 1935 by the Court of Civil Appeals for the Third Supreme Judicial District of Texas, wherein the Supreme Court of Texas, on October 6, 1936, denied appellant's petition for a writ of error and, on December 30, 1936 overruled appellant's motion for rehearing thereon, and wherein the Chief Justice of said Court of Civil Appeals, on January 7, 1937, declined to allow an appeal to the Supreme Court of the United States, United Gas Public Service Company, appellant in said Court of Civil Appeals, plaintiff-in-error in seeking review by the Supreme Court of Texas, and now appellant in this appeal from said judgment, prays that an appeal

may be allowed to the Supreme Court of the United States herein for the reasons specified in the Assignment of Errors hereinafter set out and for an order fixing the amount of the bond thereon.

The case is one in which the validity of an order of the Railroad Commission of Texas, requiring reduction of, and refund of collections at, the higher existing rates for natural gas utility service in the City of Laredo, Texas, has [fol. 895] been upheld against appellant's claim that such order is void, because the order is confiscatory in its actual operation and effect, and because it was arbitrarily made and upheld, in violation of appellant's rights secured by the due process and equal protection clauses of section 1 of the Fourteenth Amendment to the Constitution of the United States. A succinct statement of the case is as follows:

Appellant and its predecessor companies have served natural gas in Laredo for many years, owning and operating the field gathering lines and the transmission lines, as well as the city distribution mains and other equipment, used for that purpose. On December 15, 1931, the governing body of the City of Laredo, Texas, the agency having original jurisdiction over appellant's charges for gas service within that city, enacted an ordinance reducing the existing domestic gas rate in Laredo from seventy-five cents to forty cents per thousand cubic feet, the reduction to become effective January 1, 1932.[1] Prior to January 1, 1932, [fol. 896] appellant took an appeal from said ordinance to the Railroad Commission of Texas, and the Commission suspended the ordinance pending the determination of the appeal. The appeal was heard de novo by the Commission in the fall of 1932, the hearing being likewise for the purpose of determining another appeal which appellant had taken to the Commission from the refusal of Laredo to grant an increase in the existing 75 cent rate.

On June 13, 1933, the Commission entered the order here in question, which order prescribed a new rate of 55 cents per thousand cubic feet, 10 per cent penalty for nonpayment of bills within 10 days, minimum monthly bill

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[1] Both the 75 cent and the proposed 40 cent schedule provided 10 per cent discount for payment of bills within 10 days, and a minimum bill of $1.00.

of $1.00, and made the new rate retroactive, by requiring that all collections since January 1, 1932, in excess of said 55 cent rate, be refunded. Appellant having first filed in the United States District Court a bill in equity to enjoin enforcement of said order as confiscatory, appellees[1] filed this enforcement suit in the district court of Travis County, Texas,[2] alleging it to be one purpose of the en- [fol. 897] forcement suit to stay further proceedings in the federal court, and to secure a determination of the validity of the order in the courts of the state, pursuant to the procedure provided in sec. 380, Title 28, U. S. C. (Sec. 266, Judicial Code, as amended). Appellees, having obtained an order from the state district court staying them from enforcing the Commission's said rate order, then sought and obtained a stay of further proceedings in the federal court.

The case went to trial March 5, 1934, before a jury demanded by appellees, and upon appellees' original petition and appellant's first amended answer. In such answer appellant averred that the order was confiscatory, and hence void, because violative of the due process and equal protection clauses of sec. 1 of the Fourteenth Amendment to the Federal Constitution, in that its enforcement would leave about one per cent net return for 1932 and no return for 1933, upon the rate base ($885,000.00) and the depreciation reserve accrual (3 per cent of $885,000.00) found and used by the Commission in making the order. Appellant averred that the rate base and depreciation reserve accrual so used by the Commission had been arbitrarily fixed and were grossly inadequate, and that upon the fair value of $1,225,000.00 claimed by appellant, enforcement of the [fol. 898] order would leave nothing for return, both for 1932 and 1933. Appellant further averred that the Commission's use of average net revenues for a prior four year period—July 1928-July 1932—in making the order was arbitrary, in that these average revenues contained

[1] The real appellees (plaintiffs below) are the members of the Railroad Commission and the City of Laredo and its officials. The State of Texas, its Governor and Attorney General were also joined as plaintiffs.

[2] The district court of Travis County, Texas is a state court of general jurisdiction.

very substantial earnings which were non-recurring both within the period regulated by the order and for the future, in that such averages reflected conditions greatly different from those to which the order actually applied, and in that the Commission had used average revenues for a four year period commencing July 1928, in combination with a rate base fixed at the depression prices of 1932, to make the order. Appellant averred that at the time of the Commission hearing, the existing 75 cent rate was producing less than a reasonable return, and that for both 1932 and 1933, such higher rate was itself confiscatory, it yielding, even upon the rate base and depreciation accrual found by the Commission less than 3½ per cent for return in 1932 and 1933.

Judgment was entered by the trial court on April 24, 1934, denying enforcement of the order for any period prior to the date of said judgment, but permanently enjoining appellant to compliance with the order from and [fol. 899] after the date of the judgment, and until the order was modified or set aside by the state regulatory authorities. From this judgment, appellant appealed to the proper Court of Civil Appeals, an intermediate appellate court of the state, assigning as error the denial of appellant's motions for verdict and judgment below, upon the ground that all of the evidence, including the testimony most favorable to appellees, showed the order confiscatory in actual operation and hence violative of the due process and equal protection clauses contained in the Fourteenth Amendment to the Federal Constitution, such testimony showing without dispute that from the order's effective date to the time of trial, the 75 cent rate had yielded substantially less than the net return of 7 per cent of $885,000.00 the Commission had found appellant entitled to receive, and that the enforcement of said 55 cent rate from January 1, 1932 would clearly result in denial of just compensation. By related assignments, appellant sought reversal of the judgment upon the ground that the undisputed evidence showed that the order was made and the 55 cent rate was fixed upon the assumption that appellant's revenues under the 75 cent rate, from and after January 1, 1932, were equal to the average of such revenues for the [fol. 900] four year period July 1928-July 1932, and that such assumption was contrary to the facts. Appellant assigned error to the refusal of the trial court to so submit

the case to the jury as to permit fact findings as to property value and depreciation reserve accrual from the conflicting evidence thereon; and, by other appropriate assignments, appellant raised the question that the trial below—at which all findings as to property value and depreciation accrual had been refused, and at which the only verdict the lower court permitted to be returned and which was returned by the jury was its general finding that the order was not unjust and unreasonable to appellant—denied appellant a trial in accordance with due process and denied a record adequate for appellate review upon the issue of confiscation.

The Court of Civil Appeals, by its judgment entered October 30, 1935 (from which judgment this appeal is taken), reformed the judgment below so to enforce the order from its effective date (January 1, 1932), and, as so reformed, affirmed the judgment below. This judgment appellant attacked, first by motion for rehearing in the Court of Civil Appeals, and then by petition for writ of [fol. 901] error seeking a discretionary review thereof by the Supreme Court of Texas and by motion for rehearing in that court, both said motions being overruled and said petition being denied, all without opinion, the only opinion in the case by any court being that of the Court of Civil Appeals entered October 30, 1935. The judgment of the Court of Civil Appeals was based upon its broad holding that the evidence adduced at the trial below was insufficient, as a matter law, to raise an issue of confiscation. The denial of fact findings in the court below was not considered, the assignments thereon being treated by the state appellate court as presenting mere questions of practice, and as being controlled by the first holding that the evidence was insufficient to raise an issue of confiscation.

By the above described motions and petition, appellant raised and reserved the questions as to the invalidity of the order under the due process and equal protection clauses of section 1 of the Fourteenth Amendment to the Constitution of the United States which are presented by appellant's Assignment of Errors in this appeal. These questions have arisen in a suit in which there has been [fol. 902] drawn in question an act of the State of Texas, legislative in character, upon the ground that the same is repugnant to the last mentioned portions of the Federal Constitution, and in which the decision of the highest court

of the state in which a decision in the suit could be had has been in favor of the validity thereof.

Appellant, United Gas Public Service Company, desires that, pending the final determination of said appeal by the Supreme Court of the United States, the enforcement of the assailed order be enjoined and that said judgment shall be superseded and execution thereof stayed. By application separate from this petition, appellant will present the facts in respect of the security now given for the faithful performance of said judgment if the same be against appellant, and will set out the nature of the injunction, supersedeas and stay sought.

Assignment of Errors

Said appellant, United Gas Public Service Company, assigns the following errors in the record and proceedings of this case:

1. The Court of Civil Appeals erred in refusing to hold said order confiscatory upon the evidence of its actual [fol. 903] operation from its effective date (January 1, 1932), the record made at the trial (March, 1934) showing, when only that testimony most favorable to the order is considered, that its enforcement will limit appellant to a net return of 1-1/10 per cent for 1932, and to a net return of 2-1/10 per cent for 1933, when computed upon the rate base ($885,000 fixed as of August, 1932) and after providing the accrual to depreciation reserve (3 per cent per annum of $885,000), which were found and entered by the Commission as part of said order.

2. The Court of Civil Appeals erred in treating the presumption in favor of the validity of the Commission's order as irrebuttable by the undisputed evidence showing that, upon the Commission's own findings of property value and depreciation accrual, the enforcement of the order will clearly deny appellant just compensation for the use of its property during the two years between the effective date of the order and the time of trial.

3. The Court of Civil Appeals erred in refusing to require the trial court to determine and pass upon, and in refusing to determine and pass upon itself, appellant's claim of confiscation arising from its plea, properly presented and supported by substantial evidence, that the rate base ($885,-

[fol. 904] 000) used by the Commission in making said order was an arbitrary and unlawful understatement of the fair value of appellant's property used and useful to furnish gas service for Laredo.

4. Similarly, the Court of Civil Appeals erred in refusing to require the trial court to determine and pass upon, and in refusing to determine and pass upon itself, appellant's claim of confiscation arising from its plea, properly presented and supported by substantial evidence, that the figure for depreciation reserve accrual (3 per cent of $885,000) used by the Commission in making said order was grossly and unlawfully inadequate.

5. The Court of Civil Appeals erred in holding that the evidence was insufficient, as a matter of law, to show that the Commission's order was confiscatory, because such holding was made, in so far as it was based upon evidence, upon consideration of only certain portions of the testimony offered by appellees, and not by considering, weighing and passing upon, in the exercise of independent judgment as to facts and law, all of the facts pertinent to confiscation established by competent evidence.

6. The Court of Civil Appeals erred in concluding that the enforcement of the order for 1933 would leave appellant [fol. 905] a net return of more than 7 per cent of $700,000, such conclusion being contrary to all the evidence and wholly unsupported by any evidence in the record.

7. The Court of Civil Appeals erred in giving controlling effect to calculations—first made in the Court of Civil Appeals—purporting to show an average of gross revenues, operating expenses, and net revenues at the 75 cent rate for a period of four prior fiscal years (July 1928-July 1932), and in using such average for the purpose of predicting the effect of said final order upon appellant's revenues subject to regulation thereby, all the evidence at the trial showing that the application of said order to appellant's actual operations since January 1, 1932 will clearly result in confiscation of appellant's property, and all of the evidence further showing that the conditions affecting appellant's business during the four prior years used for said averages were greatly different from such conditions prevailing at and after the order is made effective.

8. The Court of Civil Appeals erred, in connection with such calculations, in arbitrarily eliminating therefrom large outlays for operating expenses actually and in good faith incurred in said four prior fiscal years, without any com- [fol. 906] petent evidence in the record to support such elimination.

9. The Court of Civil Appeals erred in computing appellant's supposed rate of return, both for 1933 and as represented by such average revenue calculations, upon a figure of $700,000 for rate base, such $700,000 figure representing the lowest valuation estimated by any witness at the trial and being offered by an engineer witness for appellees as showing estimated reproduction cost, less depreciation, at the end of 1933, the court erroneously refusing to decide confiscation from a judicial determination of fair value made in the exercise of independent judgment applied to all competent evidence thereof.

10. The Court of Civil Appeals erred in holding that, appellant not having put the 55 cent rate to a test, the evidence was insufficient to show confiscation, despite the fact that the record herein shows without dispute that the 75 cent rate was itself confiscatory, it yielding, upon the testimony most favorable to the order and upon the $885,000 rate base and 3 per cent depreciation reserve accrual found by the Commission, a net return of only 3-6/10 per cent for 1932 and of only 4-4/10 per cent for 1933, and despite the [fol. 907] showing in the record that a test of said 55 cent rate, in the usual meaning of that term, was rendered impossible by the retroactive operation of the rate order and by the stay order entered in this suit at the instance of appellees.

11. The Court of Civil Appeals erred in enforcing the retroactive refund provisions of the order in respect of appellant's completed operations of 1932 and 1933, without findings of fact—and without competent evidence as the basis for findings such as would support such action, if any findings were made—upon fair value, reasonable rates of return and depreciation reserve accrual, and net earnings before and after the enforcement of the order for said years.

12. The Court of Civil Appeals erred in failing and refusing to give appellant that independent consideration of both the facts and the law which is essential to a proper judicial

review of a rate order claimed to be confiscatory, if appellant is to be afforded the equal protection of the laws and due process of law guaranteed appellant by Section 1 of the Fourteenth Amendment to the Constitution of the United States.

13. And the said Court of Civil Appeals erred in refus- [fols. 908-1025] ing to hold said order void upon the evidence of its actual operation and effect presented in this case, which evidence showed without dispute that enforcement of the order will take appellant's property without due process of law, compell the use thereof without just compensation and deny appellant the equal protection of the laws, in violation of Section 1 of the Fourteenth Amendment to the Constitution of the United States.

Because of these errors, said order and judgment will deprive appellant of just compensation for the use of its property, will take the use thereof without due process of law, and will deny appellant the equal protection of the laws, contrary to Section 1 of the Fourteenth Amendment to the Constitution of the United States.

PRAYER FOR REVERSAL

For which errors appellant, United Gas Public Service Company, prays that said judgment entered in the above entitled cause by said Court of Civil Appeals on October 30, 1935 be reversed, and that a judgment be rendered in favor of appellant and for costs.

Dated this the 15th day of January, 1937.

John P. Bullington, F. G. Coates, Counsel for Appellant, United Gas Public Service Company.

[fols. 1026-1027] [File endorsement omitted]

IN SUPREME COURT OF THE UNITED STATES

[Title omitted]

ORDER ALLOWING APPEAL AND FIXING SECURITY FOR COSTS— Filed January 20, 1937

[fol. 1028] United Gas Public Service Company, appellant in the above entitled cause, having prayed for the allowance

of an appeal in this cause to the Supreme Court of the United States from the judgment made and entered in the above entitled suit by the Court of Civil Appeals for the Third Supreme Judicial District of Texas, on October 30, 1935, and from each and every part thereof, and having presented and filed its petition for appeal, assignment of errors, prayer for reversal and statement as to jurisdiction, pursuant to the statutes and the rules of the Supreme Court of the United States in such case made and provided;

It is Now Here Ordered that an appeal be and the same is hereby allowed to the Supreme Court of the United States from the Court of Civil Appeals for the Third Supreme Judicial District of Texas in the above entitled cause, as provided by law, and it is further ordered that the clerk of said Court of Civil Appeals shall prepare and certify a transcript of the record, proceedings and judgment in this cause and transmit the same to the Supreme Court of the United States, so that he shall have the same in said Court within forty days from this date; and

[fols. 1029-1030] It is Further Ordered that security for costs on appeal be fixed in the sum of five hundred dollars.

Dated this 16th day of January, 1937.

Benjamin N. Cardozo, Associate Justice of the Supreme Court of the United States.

[fols. 1031-1053] Citation, in usual form, showing service on Alfred M. Scott et al., filed January 20, 1937, omitted in printing.

[fols. 1054-1059] Bond on appeal for $500.00, approved and filed January 22, 1937, omitted in printing.

[fol. 1060] CLERK'S CERTIFICATE

I, R. E. Moore, Clerk of the Court of Civil Appeals for the Third Supreme Judicial District of Texas, hereby certify that the above pps. 1-791 are true and correct copies and statements from the record on appeal in said Court in cause No. 8176, styled United Gas Public Service Company, Appellant v. The State of Texas, et al., Appellees. I further

certify that the above pages 1-791 are a part of a transcript of record consisting of 1059 pages, designated as volumes 1, 2, 3 & 4; that pages 792-828 in volume 3 were delivered to me by S. A. Philquist, Clerk of the Supreme Court of Texas; and that said 1059 pages contain all matter designated in the præcipe filed with me as Clerk of said Court by said appellant, and that all omissions from said transcript of parts of the record now on file in this Court were made as set out in said præcipe. I further certify that pages 891-[fol. 1061] 1059 of this transcript consist of original documents filed with me by appellant and appellees in connection with the appeal of this cause to the Supreme Court of the United States.

In Witness Whereof, witness my hand and the seal of said Court of Civil Appeals this 27th day of Feby., 1937.

R. E. Moore, Clerk. (Seal.)

[fol. 1062] In Supreme Court of the United States

Appellees' Cross-Assignments of Error

Cross-Assignment of Error No. 1

The Court erred in refusing to permit appellees to introduce in evidence the appeal bond filed by appellant when it perfected its appeal with the Railroad Commission, because such appeal bond was both relevant and material, particularly in connection with that portion of the order of the Commission dated June 13, 1933, making such order effective as of January 1, 1932.

Cross-Assignment of Error No. 2

The Court erred in entering that portion of its judgment declaring invalid the provision in the order of the Commission of June 13, 1933, making such order effective as of January 1, 1932, because appellant when it perfected its appeal from the city ordinance to the Railroad Commission, posted its bond to suspend the provisions of the ordinance, pending such appeal.

Cross-Assignment of Error No. 3

The Court erred in entering that portion of its judgment declaring invalid the provision in the order of June 13, 1933, requiring a refund of the difference between the amounts col-

lected by appellant under the seventy-five cent rate, and [fol. 1063] the amounts that would have been due under the fifty-five cent rate, because appellant, when it perfected its appeal from the ordinance to the Railroad Commission posted its bond which was conditioned to provide for such refund.

[fol. 1064] IN SUPREME COURT OF THE UNITED STATES

[Title omitted]

NOTICE AS TO TRANSCRIPT, ETC.

To Alfred M. Scott, Assistant Attorney General of Texas; Edw. H. Lange, Counsel for Appellees:

You are hereby notified:

(1) That appellant's counsel has requested the Clerk of the Court of Civil Appeals, Third District, to do the following in making the transcript of record called for by appellant's præcipe of January 30, 1937:

[fol. 1065] Section of Præcipe:

B 4 (i). Include all p. 66, S. F. Vol. I.

B 9 (c). Include first question and answer on p. 522, S. F. Vol. I.

B 16 (f). Include third question and answer on p. 945, S. F. Vol. II.

B 17 (c). From S. F. Vol. II, include remainder p. 1247, and p. 1248, down to last question; p. 1255 include first three questions and answers.

B 21 (b). Include last question and answer on p. 1646, S. F. Vol. II.

C 11. Exclude par. 171, and include par. 238.

D 5. Include pars. 27 and 140.

(2) That appellant's counsel will request the Clerk of the Supreme Court of the United States, before printing page 27 of appellant's Statement as to Jurisdiction, to change the reference to paragraphs 33, 34, motion for rehearing, C. C. A., so as to read paragraph 35 of said motion.

Dated this 15th day of February, 1937.

Jno. P. Bullington, F. G. Coates, Counsel for Appellant.

Service of the above notice hereby acknowledged.

Signature: Alfred M. Scott, Edw. H. Lange, Counsel for Appellees.

Date Feb. 17, 1937.

[fol. 1066] IN SUPREME COURT OF THE UNITED STATES

[Title omitted]

ORDER ENLARGING TIME FOR APPELLEES' FILING OF PRÆCIPE FOR CONTENTS OF RECORD—Filed February 5, 1937

This fifth day of February, 1937, good cause for this order having been shown by Appellees, it is ordered that Appellees be and they are hereby granted an enlargement of ten days of the original ten day period allowed them by Section 2 of Rule 10 of the Supreme Court of the United States within which to file with the Clerk of the Court of Civil Appeals their præcipe indicating the additional portion of the record desired by appellees to be included in the transcript.

James W. McClendon, Chief Justice of the Court of Civil Appeals for the Third Supreme Judicial District of Texas. ——, Associate Justice of the Supreme Court of the United States.

[File endorsement omitted.]

[fol. 1067] IN SUPREME COURT OF THE UNITED STATES

[Title omitted]

ORDER ENLARGING TIME FOR APPELLEES' FILING OF PRÆCIPE FOR CONTENTS OF RECORD—Filed February 17, 1937

This 11th day of February, 1937, good cause for this order having been shown by Appellees, it is ordered that Appellees be and they are hereby granted an enlargement of 20 days from and after this date, under Section 2 of Rule 10 of the Supreme Court of the United States, within which to file with the Clerk of the Court of Civil Appeals their præcipe indicating the additional portions of the record desired by appellees to be included in the transcript.

Benjamin N. Cardozo, Associate Justice of the Supreme Court of the United States.

[File endorsement omitted.]

[fol. 1068] [File endorsement omitted]

IN SUPREME COURT OF THE UNITED STATES

[Title omitted]

APPELLEES' COUNTER PRÆCIPE FOR TRANSCRIPT OF RECORD—Filed March 2, 1937

To the Clerk of the Court of Civil Appeals for the Third Supreme Judicial District of Texas:

You are hereby requested to include in the transcript of record to be filed in the Supreme Court of the United States pursuant to an order of appeal allowed on January 16, 1937, in the above entitled cause by Mr. Justice Cardozo, the following portions taken from the record on file in this cause:

[fol. 1069] A

From the Transcript certified on June 20, 1934 by George H. Templin, District Clerk, Travis County, Texas, setting forth proceedings in Cause No. 52,774 on the docket of the Fifty-third District Court of Travis County, Texas, and filed in this Court of Civil Appeals on June 21, 1934, the following:

	Page of Transcript
1. Caption (entire page)	1
2. From the ordinance of the City of Laredo dated December 15, 1931, and effective January 1, 1932, which is attached to plaintiffs' original petition as "Exhibit A", the following:	
(a) Begin with the paragraph on page 13, "whereas, about the year 1921" and continue to the beginning of the ordaining clause on page 14	13-14
3. All of plaintiffs' First Supplemental Petition (omitting caption), beginning with paragraph V on page 81, and continuing through page 89	81-89
4. All of the trial court's order on demurrers and exceptions	96-97

Page of Transcript

5. All of Motion of Defendant to Discharge Jury 98, 99, 100
6. Plaintiffs' Motion for Peremptory Instruction and order overruling the same 111-112

[fol. 1070]

7. Plaintiffs' Motion for Peremptory Instruction and order Overruling the same 112A, 112B, 112C
8. Paragraph 1 of Defendants' Motion for Judgment "Non Obstante Verdicto" 234
9. Plaintiffs' Motion for Judgment and Order Overruling the same 242-243
10. Plaintiffs' Motion for Judgment on the Verdict, and Order Granting said Motion 244
11. Plaintiffs' Bill of Exception No. 1, and Order Allowing the Same 403-405
12. Motion of Defendant for Original of Defendants' Exhibit No. 13 to be sent to Appellate Court 407-410
13. That portion of the order of the trial court on the same Motion, beginning with the paragraph at the bottom of page 411, "It is therefore ordered," to "to-wit" at the bottom of the said page; (and add the following notation: Here follow exhibits itemized as in the herein-above Motion and Order signed by the District Judge and filed May 4, 1934) 411
14. That portion of appeal bond, from District Court to Court of Civil Appeals, beginning at top of page 242 and continuing through, "Judge, 53rd District Court, Travis County, Texas" 442-443
15. From the Original Brief of Appellees filed in Cause No. 8176, in the Court of Civil Appeals, the following numbered cross-assignments of error:

    Appellees' Cross-assignments of Error Numbers 1 to 3, inclusive (Page 103 of Appellees' Brief).

16. (This) Appellees' Counter Præcipe, and the Order Enlarging the time for the filing thereof.

[fol. 1071] B

From the Statement of Facts setting forth the testimony given and the exhibits offered and received in evidence at the trial of said Cause No. 52,744 in the 53rd District Court of Travis County, Texas, such Statement of Facts consisting of nine separately bound volumes, the first four volumes numbered I, II, III and IV, and the last five volumes designated A, B, C, D and E, which Statement of Facts was filed, after final approval, by Geo. H. Templin, District Clerk, on the 8th day of June, 1934, and was filed in this Court of Civil Appeals on the 21st day of June, 1934, the following, and in the following order:

NOTE.—In making this portion of the Transcript, please omit all unnecessary matter, including all objections to testimony, all comments and arguments on such objections, all rulings thereon and all the exceptions taken to such rulings. At the point of each such omission, write "Plaintiffs' (defendant's) objection overruled," where the objection was overruled and exception taken, or write "Objection made, sustained, and offer of proof made by plaintiffs (defendant)," where the objection was sustained, and offer of proof made. Please omit repetition of questions or answers where the record shows that the repetition was because the witness or the court did not understand the question, or counsel or the court did not understand the answer, also unanswered questions and like matter. Please [fol. 1072] confine the portions of the record on pages designated, to the questions and answers directly bearing upon the particular ultimate fact about which the witness is testifying.)

Plaintiffs' Testimony

1. Order of the United States District Court remanding the cause to the 53rd Judicial District Court of Travis County, Texas. (S. F. Volume III, pages 1765 to 1767.)

2. From the testimony of C. F. Petet, a witness for plaintiffs, the following, from S. F. Volume I:

(a) Beginning at p. 11, and continuing through "plaintiff rests" on p. 14;

(b) Beginning at page 753 and continuing through p. 756.

Defendant's (Gas Company) Testimony)

2-a. From the testimony of Henry Beck, a witness for defendant, gas company, the following, from S. F. Vol. I:

(a) Beginning with p. 15 and continuing through p. 21, including all colloquy, and statements of Court and Counsel:

3. From the testimony of H. E. Womack, a witness for defendant, the following, from S. F. Volume I:

(a) Cross-examination beginning with p. 135 and continuing through "Texas gas area" on p. 158;

(b) Cross-examination beginning at top of p. 180 and continuing through "Laredo is concerned" on p. 190;

(c) Re-Cross-examination beginning at top of p. 199 and continuing through "company's records" on p. 207; and beginning on p. 227 and continuing through "Yes, sir" at [fol. 1073] top of p. 236; and beginning with "now referring" on page 250 and continuing through bottom of page 252; and beginning at top of page 255 and continuing through "37" on p. 256; and beginning with "Now, Mr. Womack" on p. 257 and continuing through "just who does" at top of p. 261; and beginning with "Q. Going back a moment" on p. 263 and continuing through "would be" on p. 277; and beginning with "Mr. Womack" on p. 289 and continuing through "a wild guess" on p. 293.

(d) Cross-examination beginning on p. 1588 and continuing through "figures with them" on p. 1595 (From S. F. Vol. II).

(e) From defendant's Exhibit 2 (S. F. Vol. IV), p. 2013.

4. From the testimony of E. B. Neiswanger, a witness for defendant, gas company (From S. F. Volume I):

(a) Cross-interrogatory number 5, and the answer thereto, p. 108;

(b) Cross-interrogatory number 6, and the answer thereto, pp. 108-109.

5. From the testimony of H. E. Randall, a witness for defendant, (From S. F. Volume I):

(Cross-examination)

(a) Beginning on p. 117 and continuing through "correct" on p. 128; and beginning on bottom of p. 131 and continuing through to bottom of p. 132.

[fol. 1074] 6. From the testimony of W. W. Stein, a witness for defendant, from S. F. Volume I:

(Cross-examination)

(a) Beginning with first question on p. 350, and continuing through p. 417;

(b) Beginning on p. 757 and continuing through p. 770; (From S. F. Volume II).

(c) Beginning on p. 1530 and continuing through p. 1534.

7. The following portions of Exhibits:

(a) From plaintiffs' Exhibit 10 (S. F. Volume III) pp. 1973 through 1977;

(b) From plaintiffs' Exhibit 11 (S. F. Volume III) pp. 1978 through 1981.

8. From the testimony of M. A. Abernathy, a witness for defendant, from S. F. Volume I:

(Cross-examination)

(a) Beginning with the last question on p. 451 and continuing through p. 483.

9. The following portions of Exhibit:

(a) From defendant's Exhibit No. 8 (S. F. Volume IV) pp. 2128 through 2138.

[fol. 1075] 10. From the testimony of A. D. Greene, a witness for defendant, from S. F. Volume I:

(Cross-examination)

(a) Beginning with the first question on p. 632 and continuing through "no, sir" on p. 663; beginning with the last question on p. 643 and continuing through "that is right, yes, sir" on p. 656; beginning at page 718 and continuing through the last answer on p. 723, including colloquy on pp. 719 and 720;

(From S. F. Vol. II:)

(b) Beginning at p. 1522 and continuing through "Laredo" on p. 1526.

11. From the testimony of P. McDonald Biddison, a witness for defendant, from S. F. Volume I:

(Cross-examination)

(a) Beginning with the first question on p. 579 and continuing through "purposes" on p. 581; and beginning with "I have no information" on p. 598 and continuing through "properties" on p. 607; and beginning at bottom of p. 618 and continuing through "small" on p. 626; and beginning at p. 745 and continuing through p. 752.

[fol. 1076] 12. From the testimony of H. L. Dickerson, a witness for defendant, from S. F. Volume I:

(Cross-examination)

(a) Beginning at p. 689 and continuing through "around 20¢" on p. 711; and beginning at p. 713 and continuing through "mine" on p. 715; and beginning with second question on p. 717 and continuing through the answer at top of p. 718.

13. From the defendant's Exhibit 13, consisting of S. F. Volumes A, B, C, D, and E, being the record of the proceedings had before the Railroad Commission of Texas, plaintiffs designate the following portions of such Exhibit:

(a) From the testimony of A. D. Greene, a witness for defendant, gas company, from S. F. Volume A:

(Cross-examination)

1. Beginning with the first question on p. 187 and continuing through "That is correct" on p. 209, including comment by Commissioner Thompson.

2. Beginning with "Now, the item" on p. 224 and continuing through "$1,240,655" on the same page.

(b) From the testimony of P. McDonald Biddison, a witness for defendant, from Volume A:

[fol. 1077] (Cross-examination)

1. Beginning with the second question on p. 302 and continuing through the last answer on p. 304; and beginning with "Dealing now" on p. 358 and continuing through "reasonable worth" on p. 367; and beginning with the second last question on p. 372 and continuing through "property" at the top of p. 376.

(c) From the testimony of H. E. Womack, a witness for defendant, from Volume B:

1. Beginning at p. 1750 and continuing through "that time" at the bottom of page 1752, including all comment and colloquy.

(d) From the testimony of J. V. Strange, witness for defendant, from Volume A:

(Cross-examination)

1. Beginning with "Q. What was the purpose" on p. 581, and the answer thereto on the same page.

2. Beginning at top of p. 593 and continuing through p. 598; and beginning with the question "Mr. Strange, in connection" on p. 603 and continuing through the middle of p. 612.

(e) From the testimony of W. W. Stein, a witness for defendant, from Volume B:

1. Beginning with the first question on p. 1601 and con-
[fol. 1078] tinuing through the last answer on p. 1603; and beginning with the last question on p. 1692 and continuing through "Moody-Seagraves interests" on p. 1695; and beginning with the last question on p. 1699 and continuing through "I suppose" on p. 1700; and beginning with "Now, you testified" on p. 1704 and continuing through "I never asked him" on p. 1709; and beginning with the last question on p. 1714 and continuing through the last answer on p. 1716.

(f) From the testimony of H. E. Elrod, a witness for plaintiffs, from Volume B:

1. Beginning with the first question on p. 1019 and continuing through "I have" at the top of p. 1026; and beginning with "Will the reporter please" on p. 1028 and continuing through "Laredo" at top of p. 1032; and beginning with "Commissioner Thompson" at bottom of p. 1050 and continuing through "Oh, yes" on page 1051; and beginning with "Now turning back" on page 1118 and continuing through "Yes" on p. 1129; and beginning with "turning back" on p. 1131 and continuing through "been made" at bottom of p. 1138.

[fol. 1079] 2. Beginning with cross-examination on p. 1139 and continuing through "market prices" on p. 1141;

and beginning with the second question from the bottom on p. 1198 and continuing through "that is it" on page 1202; and beginning with the last question on p. 1207 and continuing through the bottom of p. 1210; and beginning with the last question on p. 1353 and continuing through "at this time" on p. 1355, including statements by the Commissioner; and beginning with the second question on p. 1377 and continuing through "to serve Laredo" on the same page; and beginning with "Commissioner Thompson: Do you know" on p. 1380 and continuing through "Yes" at bottom of p. 1384.

3. Beginning with "Mr. Coates—why not let the record show" on p. 1683 and continuing through "he would testify" on the same page.

4. Beginning with "He (Mr. Elrod) was going to" on p. 1684 and continuing through "competency" on p. 1685.

(g) From the testimony of J. D. Shaw, a witness for plaintiffs, from S. F. Volume B:

1. Beginning at top of p. 1154 and continuing through "yes" at the bottom of p. 1161; and beginning *and beginning* [fol. 1080] with the second question on p. 1173 and continuing through "before very long" on p. 1174.

(h) From the testimony of John P. Kinney, a witness for plaintiffs, from S. F. Volume B:

1. Beginning with the first question on p. 1299 and continuing through "$166,996.68" on p. 1305; and beginning with the last question on p. 1314 and continuing through the first answer on p. 1316; and beginning with the second question on p. 1332 and continuing through "dividend entries" on p. 1333.

(i) From the testimony of A. J. Neff, witness for plaintiffs, from S. F. Volume B:

1. Beginning with "State your name" on p. 1405 and continuing through "A. Yes" at the middle of p. 1410.

2. Include Exhibit J (Volume E), pp. 2466 to 2472, inclusive.

(j) From the testimony of Leon O. Lewis, a witness for plaintiffs, from S. F. Volume B:

1. Beginning with "State your name" on p. 1460 and continuing through "it is" on p. 1464; and beginning with "Mr.

Lewis" on p. 1475 and continuing through "July 31, 1932" on p. 1482; and beginning with "Now" on p. 1487 and continuing through "basis of revenue" on p. 1500; and be-
[fol. 1081] ginning with (cross-examination) "Mr. Lewis" on p. 1508 and continuing through "theory" on p. 1510; and beginning with "I have attempted" on p. 1535 and continuing through "all of them" on p. 1571; and beginning with "Now, in connection" on p. 1580 and continuing through "examination" at top of p. 1586, including statements of counsel and of the Commissioner;

2. Beginning with last question on p. 1589 (re-direct examination) and continuing through "could find" on p. 1591; and beginning with "Turning to p. 11 of Exh. L," on p. 1592 and continuing through "That is right" on p. 1597; and beginning with "What was the rate" on p. 1597 and continuing through "three-fourths per cent" on p. 1598.

(k) From the testimony of M. A. Abernathy, a witness for defendant, from S. F. Volume B:

1. Beginning with (cross-examination) "Were you paying" on p. 1747 and continuing through the answer on the same page.

(l) Include the following exhibits or portions thereof:

1. Defendant's Exhibit 3 (Volume C), pp. 2071-2080;

2. From defendant's Exhibit 5 (Volume C), pp. 2110, 2111, and 2112;

[fol. 1082] 3. From defendant's Exhibit No. 6 (Volume C), p. 2120;

4. From defendant's Exhibit No. 7 (Volume C), pp. 2122 to 2125, inclusive;

5. From defendant's Exhibit No. 8 (Volume C), pp. 2126 and 2127, and Paragraph II on p. 2128; also Paragraph VI on pp. 2131 and 2132, and Paragraph XI on pp. 2135 to 2136;

6. Defendant's Exhibit No. 10 (Vol. C), pp. 2148 to 2155, inclusive;

7. From plaintiffs' Exh. A (Vol. D), pp. 2168, 2171, 2196, 2297, 2417 (Note: Indicate the remaining pages omitted, which consist of detailed inventory sheets, showing each item of property and its appraised value);

8. Plaintiffs' Exhibit E (Volume D), p. 2434;

9. Plaintiffs' Exhibit F (Volume D), p. 2436;

10. Plaintiffs' Exhibit G (Volume D), pp. 2438 to 2440, inclusive;

11. Plaintiffs' Exhibit H (Volume D), pp. 2443 to 2447, inclusive:

12. Plaintiffs' Exhibit L (Volume D), pp. 2450 to 2461, inclusive.

Plaintiffs' Rebuttal Testimony

14. From the testimony of Leon O. Lewis, a witness for plaintiffs, from S. F. Volume I:

(a) Beginning at p. 771 and continuing through p. 793; and beginning with the first question on p. 796 and con-
[fol. 1083] tinuing through "1774" on p. 797, including all objections and statements of counsel; and beginning with the fourth question on p. 810 and continuing through "line" on p. 831; and beginning with "Mr. Lewis" on p. 833 and continuing through "increased 31.22%" on p. 841;

(b) Include plaintiffs' Exhibit No. 4 (S. F. Volume III), pp. 1770 to 1772, inclusive;

(c) Include plaintiffs' Exhibit No. 5 (S. F. Volume III), pp. 1773 to 1777, inclusive;

(d) Include plaintiffs' Exhibit 8 (S. F. Volume III), pp. 1785 to 1797, inclusive;

(From S. F. Volume II:)

(e) Beginning at p. 851 and continuing through p. 879;

(Cross-examination)

(f) Beginning at p. 927 and continuing through first answer on p. 972; beginning with first question on p. 972 and continuing through "I wanted to know" on p. 1004; beginning with "all right" on p. 1004 and continuing through p. 1011, including all colloquy of counsel on p. 1011; beginning at top of p. 1012 and continuing through p. 1058;

(Re-direct Examination)

(g) Beginning at top of p. 1064 and continuing through p. 1080; beginning at the top of p. 1081 and continuing
[fol. 1084] through p. 1088, and including objections and remarks;

(Recross-examination)

(h) Beginning at the middle of p. 1088 and continuing through the middle of p. 1096;

(Redirect Examination)

(i) Beginning at top of p. 1535 and continuing through the middle of p. 1537;

(j) Include that portion of plaintiffs' Exhibit No. 13 (S. F. Volume III) comprising pp. 1987, 1988, and 1989, to and including the word "thereunder" in the middle of p. 1990, and insert at that point the following notation: "Here follows a detailed list of oil and gas leases comprising the company's production system properties"; then begin with "to have and to hold" in the middle of p. 1995 and continue through p. 1996, and add the following notation: "acknowledged in statutory form."

15. From the testimony of John P. Kinney, witness for plaintiffs, from S. F. Volume I:

(a) Beginning at p. 798 and continuing through "audit" on p. 816;

(From S. F. Vol. II:)

(Cross-examination)

(b) Beginning at p. 880 and continuing through "dollars" at the top of p. 884;

[fol. 1085] (Redirect Examination)

(c) Beginning at p. 911 and continuing through the bottom of p. 915; beginning at p. 921 and continuing through p. 925.

16. From the testimony of H. E. Elrod, a witness for plaintiffs, from S. F. Volume II:

(a) Beginning at p. 1096 and continuing through the middle of p. 1104;

(b) Include that portion of plaintiffs' Exhibit No. 9 (S. F. Vol. III) beginning with p. 1798 and continuing through 1972;

(c) Beginning at bottom of p. 1110 and continuing through p. 1199;

(Cross-examination)

(d) Beginning with the second question on p. 1219 and continuing through "soil" on p. 1256; beginning at top of p. 1363 and continuing through p. 1396; beginning at

top of p. 1397 and continuing through p. 1417; beginning at top of p. 1418 and continuing through 1422;

(Redirect Examination)

(e) Beginning at bottom of p. 1422 and continuing through p. 1433;

[fol. 1086] (Recross-examination)

(f) Beginning at top of p. 1434 and continuing through the first answer on p. 1451;

(Redirect Examination)

(g) Beginning at top of p. 1598 and continuing through p. 1603;

(Recross-examination)

(h) Beginning with "you make no" on p. 1606 and continuing through "I think so" on p. 1607.

17. From the testimony of Albert Martin, a witness for plaintiffs, from S. F. Vol. II:

(a) Beginning at the top of p. 1259 and continuing through "they do" on p. 1265; beginning at top of p. 1272 and continuing through p. 1279; beginning at top of p. 1475 and continuing through the middle of p. 1477;

(Cross-examination)

(b) Beginning at p. 1477 and continuing through the second answer on p. 1494.

18. From the testimony of J. O. Walker, a witness for plaintiffs, from S. F. Volume II:

(a) Beginning at p. 1282 and continuing through "Yes, sir" at top of p. 1285; Beginning with last question on p. 1291 and continuing through the last "Yes, sir" on p. 1294.

[fol. 1087] (Cross-examination)

(b) Beginning with the first question on p. 1296 and continuing through "the same roof" on p. 1300.

(Redirect Examination)

(c) Beginning at top of p. 1301 and continuing through "Laredo" on p. 1307;

Beginning with "you are acquainted" on p. 1309 and continuing through the second "yes" on p. 1310.

(Cross-examination)

(d) Beginning at top of p. 1311 and continuing through the middle of p. 1316.

19. From the testimony of Louis Hausmann, a witness for plaintiffs, from S. F. Volume II:

(a) Beginning at middle of p. 1317 and continuing through "Yes, sir" at top of p. 1324.

(Cross-examination)

(b) Beginning at top of p. 1324 and continuing to bottom of p. 1327.

(Recross-examination)

(c) Beginning at top of p. 1328 and continuing to bottom of said page.

(Recross-examination)

(d) Beginning at top of p. 1329 and continuing through last answer on p. 1331.

[fol. 1088] 20. From testimony of Jack Scales, a witness for plaintiffs, from S. F. Volume II:

(a) Beginning at bottom of p. 1342 and continuing through "about three years" at bottom of p. 1345.

(Cross-examination)

(b) Beginning at top of p. 1346 and continuing through "yes, sir" at bottom of said page.

(Redirect Examination)

(c) Entire page 1347.

21. From the testimony of H. M. Irvin, a witness for plaintiffs, S. F. Volume II:

(a) Beginning at bottom of p. 1352 and continuing through "Yes, sir" at top of p. 1355.

(Cross-examination)

(b) Beginning with "you have never" on p. 1355 and continuing through "Yes, sir" on p. 1357.

(Redirect Examination)

(c) Beginning with the first question on p. 1358, and continuing through the bottom of said page.

(Recross-examination)

(d) Beginning at top of p. 1359 and continuing through to bottom of p. 1360.

[fol. 1089] (Redirect Examination)

(e) Beginning with the first question on p. 1361 and continuing through "every day, yes, sir" on the same page.

22. From the testimony of R. H. Montgomery, a witness for plaintiffs, from S. F. Volume II:

(a) Beginning at top of p. 1496 and continuing through "price trends" on p. 1499.

(Cross-examination)

(b) Beginning at bottom of p. 1499 and continuing through "Yes" at top of p. 1502.

(Redirect Examination)

(c) Beginning with the next to the last question on p. 1499 and including the answer "it should increase" on p. 1503, and continuing from p. 1503 through, "any good or service", on p. 1505.

23. From the testimony of R. H. Hargrove, a witness for defendant, S. F. Volume II:

(Direct Examination by Plaintiffs)

(a) Begin at middle of page 1537 and continuing through "electric bond and share company" on p. 1538.

[fol. 1090] 24. From the testimony of Charles W. Fowler, a witness for plaintiffs, from S. F. Volume II:

(a) Beginning at top of p. 1616 and continuing through "it would" on p. 1621; Beginning with "now to get back" on p. 1628 and continuing through "it would" on the same

page; Beginning with the last question on p. 1632 and continuing through "I think so" on p. 1633.

24-a. Plaintiffs' Exhibits Nos. 10 and 11 (S. F. Vol. III, pp. 1974-1982).

Defendant's Surrebuttal Testimony

25. From the testimony of R. H. Hargrove, a witness for defendant, from S. F. Volume II:

(a) Beginning at top of p. 1658 and continuing through "it does" at p. 1661.

(Cross-examination)

(b) Beginning at bottom of p. 1661 and continuing through the last answer on p. 1664; beginning with "how many" on p. 1666 and continuing through the first answer on p. 1667.

26. From the testimony of J. V. Strange, a witness for defendant, from S. F. Volume II:

(a) All the testimony of this witness, beginning at p. 1542 and continuing through p. 1575.

[fol. 1091] 27. From the testimony of John S. Ivey, a witness for defendant, from S. F. Volume II:

(Cross-examination)

(a) Beginning at middle of p. 1647 and continuing through bottom of p. 1656.

(b) The last question and the answer thereto on p. 1657.

28. From the testimony of J. A. Phillips, a witness for defendant, from S. F. Volume II:

(a) All testimony of this witness, including all statements of counsel, as well as comments by the Court, beginning with "Mr. Phillips" and continuing on pp. 1688, through first answer on p. 1694.

(b) All questions and answers on cross examination appearing on p. 1715.

29. Appellant's "Notice and Acknowledgment of Service of Appellant's Præcipes for Record" filed on February 1, 1937, together with acknowledgment of service of said præcipes upon Appellees' counsel of same date.

30. Order of Mr. Associate Justice Benjamin N. Cardozo, of the United States Supreme Court, dated February 11, 1937, filed February 17, 1937, extending 20 days the period for Appellees' filing of their counter præcipe for contents of transcript.

31. Copy of this Appellees' Counter Præcipe for contents of the transcript, filed March 2, 1937.

Dated at Austin, Texas, this the 2nd day of March A. D. 1937.

Alfred M. Scott, Edw. H. Lange, Counsel for Appellees.

[fol. 1092] [File endorsement omitted]

IN SUPREME COURT OF THE UNITED STATES

[Title omitted]

STIPULATION AS TO RECORD—Filed March 5, 1937

[fol. 1093] Whereas, on February 1, 1937, appellant United Gas Public Service Company obtained acknowledgment of service and filed its præcipe dated January 30, 1937, designating portions of the record to be typed and incorporated in a transcript of record to be certified by the Clerk of the Court of Civil Appeals to the Supreme Court of the United States, and said portions of the record so designated have been typed and certified by said Clerk, and

Whereas, appellees, having secured 20 days extension of time from February 11, 1937 for filing their counter præcipe, have duly filed said counter præcipe on March 2, 1937, and it appears to counsel that by far the greater part of the record in the state court has now been designated by the two præcipes, and

Whereas, the record in the state court is typewritten, considerable expense would be incurred in retyping those parts designated by counter præcipe, the Court of Civil Appeals has indicated its willingness to order that the original record be sent to the Clerk of the Supreme Court of the United States, provided said record is returned to said Court of Civil Appeals when this appeal is concluded, the [fol. 1094] time in which said record must be filed at Washington will expire March 12, 1937, and it is impossible for

the Clerk of the Court of Civil Appeals, with the forces he has available, to complete the typing of said record and have the same in Washington by March 12, 1937.

Therefore, it is stipulated:

1. That counsel for appellees will undertake to obtain an order from the Court of Civil Appeals allowing its Clerk to certify and send to the Clerk of the Supreme Court of the United States the original record, consisting of the Transcript and the nine volumes comprising the Statement of Facts.

2. That if said order is obtained, said order and the original record, as above described, together with the transcript already made and certified by the Clerk of the Court of Civil Appeals pursuant to appellant's præcipe, together with appellees' counter præcipe, the matter called for by sections 15 of Subdivision A, and 30 of Subdivision B thereof, notice to appellees of changes, etc. in the transcript and other appeal papers and acknowledgment of service of said notice, and this stipulation may be certified by the Clerk of the Court of Civil Appeals to said Clerk of the Supreme Court as the transcript of record on this appeal.

[fols. 1095-1096] 3. This stipulation is not intended as a waiver either by appellant or appellees of the right to seek a finding and order as to costs of supervising and printing, in case either party causes unnecessary parts of the record to be printed.

Dated 5th day of March, 1937.

F. G. Coates, Counsel for Appellant. Edw. H. Lange, Alfred M. Scott, Counsel for Appellees.

[fol. 1097] [File endorsement omitted]

[fol. 1098] IN COURT OF CIVIL APPEALS FOR THE THIRD SUPREME JUDICIAL DISTRICT OF TEXAS

[Title omitted]

ORDER ALLOWING ORIGINAL RECORD TO BE CERTIFIED TO THE CLERK OF THE SUPREME COURT OF THE UNITED STATES—Filed March 5, 1937

It appearing that an appeal in this cause has been allowed to the Supreme Court of the United States and that

appellant and appellees have entered into a certain stipulation dated 5th day of March, 1937, now on file in this court, whereby it is contemplated that the original record in this cause will be sent to the Clerk of the Supreme Court of the United States as part of the record in said appeal thereto. And it appearing further that there is good cause for permitting said original record to be so used;

[fols. 1099-1100] It is Therefore Ordered that the Clerk of this Court, as part of the record on said appeal, be and he is hereby authorized and directed to certify and send to the Clerk of the Supreme Court of the United States at Washington the following portions of the record in this Court:

The Transcript, Vols. I-IV and Vols. A-E, Statement of Facts;

conditioned, that said record shall be returned to this Court when said appeal to the Supreme Court of the United States is finally determined.

James W. McClendon, Chief Justice, Court of Civil Appeals for the Third Supreme Judicial District of Texas. (Seal Court of Civil Appeals of the State of Texas.)

[fol. 1101] Bill of Costs omitted in printing.

[fol. 1102] CLERK'S CERTIFICATE

I, R. E. Moore, Clerk of the Court of Civil Appeals for the Third Supreme Judicial District of Texas, hereby certify that the typewritten transcript of record consisting of 1104 pages and in four volumes, volumes 1-3 being certified by me on the 27th day of February 1937, and volume 4 being certified by me on the 5th day of March, 1937, are true and correct copies and statements from the record on appeal in said court in cause No. 8176 styled United Gas Public Service Company, Appellant v. State of Texas, et al., Appellees, or are the original papers or true copies thereof filed with me upon the appeal in said cause to the Supreme Court of the United States. I further certify that said volumes 1-4, together with the Transcript certified

on June 20, 1934 by George H. Templin, District Clerk, Travis County, Texas, setting forth proceedings in cause No. 52,774, 53rd District Court, Travis County, Texas, and filed in this Court of Civil Appeals on June 21, 1934, together with Volumes I-IV and Volumes A-E of the Statement of Facts in said cause No. 52,774, filed by George H. Templin, District Clerk on the 8th day of June, 1934, and [fols. 1103-1104] filed in this Court of Civil Appeals on the 21st day of June, 1934 comprise the entire record on this appeal designated by the præcipes of appellant and appellees, as modified by the stipulation dated the 5th day of March, 1937, and appearing on pages 1092-1095 of volume 4 of my typewritten transcript.

In Testimony Whereof, witness my hand and the seal of said Court of Civil Appeals this 5th day of March, 1937.

R. E. Moore, Clerk, Court of Civil Appeals for the Third Supreme Judicial District of Texas. (Seal Court of Civil Appeals of the State of Texas.)

[fol. a] [File endorsements omitted]

* * * * * * *

[fol. 1] In Fifty-Third District Court, Travis County, Texas

No. 52,774

The State of Texas et al.

v.

United Gas Public Service Company

Statement of Facts—Filed June 1, 1934

Before Hon. C. A. Wheeler, Judge, and a Jury

Appearances

A. R. Stout, Esq., Assistant Attorney General; W. C. Fitzhugh, Esq., Assistant Attorney General, for the State of Texas.

R. L. Bobbitt, Esq., Edward H. Lange, Esq., for the City of Laredo.

Frank G. Coates, Esq., Tom Scurry, Esq., John Bullington, Esq., of Baker, Botts, Andrews & Wharton, Houston, Texas.

C. B. Neel, Esq., Ben H. Powell, Esq., for United Gas Public Service Company.

fols. 2-10] Wednesday, March 7, 1934

Morning Session: 9:00 a. m.

(The members of the jury were selected and sworn, and thereupon were excused by the Court until 2:00 p. m.)

Afternoon Session: 2:00 p. m.

(The members of the jury were excused by the Court until Thursday, March 8, 1934, at 9:00 a. m.)

Thursday, March 8, 1934

Morning Session: 9:00 a. m.

* * * * * * *

fol. 11] C. F. PETET, a witness for Plaintiffs, having been duly sworn, testified as follows:

Direct examination

Questions by Mr. Lange:

Q. State your name.
A. C. F. Petet.
Q. Where do you live, Mr. Petet?
A. In Austin.

fol. 12] Q. What is your occupation at this time?
A. Secretary of the Railroad Commission of Texas.
Q. How long have you held that position?
A. It will soon be ten years.
Q. You held that position on the 13th day of June, 1933?
A. Yes, sir.
Q. And have held it ever since that time?
A. Yes, sir.

Mr. Lange: This is a certified copy of the Railroad Commission's order of June 13, 1933. I want the witness to identify it.

Q. Is that instrument that you held a certified copy of the Railroad Commission's order entered in the case to which it refers?

A. Yes, sir.

Mr. Coates: Is that both the opinion and order?

A. It does go to the opinion and order.

Mr. Coates; To which defendant, United Gas Public Service Company, objects for each of the reasons stated in its Bill of Exception No. 1.

The Court: Overruled.

Mr. Coates: Note our exception.

(Thereupon the copy of the opinion and order was offered in evidence by the plaintiffs and marked Plaintiffs' Exhibit No. 3. This exhibit appears in Volume of Exhibits III, page- 1769 and 1725.)

Mr. Coates: Now, at this time we move the Court to instruct the jury that they can consider this opinion and order only for the purpose of showing that the opinion and [fol. 13] order were made and entered, and not as evidence of the truth of any of the statements therein contained.

The Court: Overruled.

Mr. Coates: Note our exception.

Q. Mr. Petet, will you identify this instrument?

A. Yes, sir. This is an instrument that is on record in the files of the Railroad Commission of Texas.

Q. I will ask you whether or not it is the bond filed by the Texas Border Gas Company with the Railroad Commission in this case?

A. It is a copy of the bond.

Q. A certified copy?

A. Yes, sir.

Q. At the time it appealed to the Railroad Commission?

A. Yes, sir.

Q. From the ordinance passed in the City of Laredo?

A. Yes, sir.

Mr. Lange: We offer this in evidence.

Mr. Coates: To which defendant objects because——

The Court: Is there any issue on that, that the Railroad Commission did not have jurisdiction?

Mr. Coates: No, sir.

The Court: Then the objection is sustained.

Mr. Lange: Note our exception. That is all, Mr. Petet.
Mr. Coates: No cross-examination.

(Witness excused.)

[fol. 14] Mr. Lange: Now, if the Court please, we desire at this time to stipulate for the purpose of the record that the 55-cent rate provided for in this order has never been put into effect and is not now in effect.

Mr. Coates: That is true, and the plaintiff need not introduce any evidence that the 55-cent rate has not been put into effect, because it is a fact that it has not been.

Mr. Stout: And that the 75-cent rate is still being charged and collected from the consumers in the City of Laredo.

Mr. Lange: The order and opinion that we have here is the same order which we read to the jury this morning, and if it will be considered that it has been read into the record and has been read to the jury, then we will not read it again at this time. Is there any objection to the fact that it is not re-read again?

Mr. Coates: No, sir; except, of course, it is subject to the objection made by us this morning.

Mr. Lange: The plaintiff rests.

* * * * * * *

[fol. 15] Henry Beck, a witness for defendant, having been duly sworn, testified as follows:

Direct examination.

Questions by Mr. Coates:

Q. Please state your name.
A. Henry Beck.
Q. What is your business, Mr. Beck?
A. I am Chief Reporter for the Railroad Commission.
Q. How long have you been employed in that capacity?
A. Something over four years.
Q. Mr. Beck, were you Chief Reporter for the Railroad Commission in October and November, 1932?
A. Yes, sir.
Q. During those two months did you report the testimony and likewise all stipulations and agreements set forth in the

hearing before the Railroad Commission in connection with the Laredo case?

A. Yes, sir.

Q. Did you correctly so report those proceedings?

A. Yes, sir.

Mr. Lange: Now, if Your Honor please, what is the relevancy of that testimony in this hearing at this time?

Mr. Coates: We are going to introduce a stipulation with reference to this 5-cent well head price.

[fol. 16] Mr. Lange: We think the entire matter that is to be proved is to be proved up here.

Mr. Bobbitt: Any stipulation made in the hearing before the Railroad Commission has no binding effect or relevancy here.

The Court: I don't know whether he wants to introduce it as a stipulation to bind you here or not now. I don't know what he wants to do yet.

Mr. Bobbitt: We were just asking the purpose of this.

Mr. Coates: I would like to have the last question asked the witness read.

(Thereupon the Reporter read the last preceding question asked the witness, as follows: "Q. Did you correctly so report those proceedings?")

Mr. Coates: What was your answer, Mr. Beck?

A. Yes, sir.

Q. Was the testimony, stipulation, and so forth, in that proceeding reduced to writing?

A. Yes, sir.

Mr. Lange: If the Court please, we still do not know the purpose of that inquiry.

Mr. Coates: We know the purpose of it.

The Court: I don't know of any rules that require him to disclose all his purposes at this time. You can object if you want to, though.

Q. Do you hold in your hand a transcript of such testimony, Mr. Beck?

[fol. 17] A. A good part of it. I don't think it is complete.

Q. But such part as you hold is a part of the transcript of the testimony in that hearing?

A. Yes, sir.

Q. Will you kindly read into the record here a stipulation contained on pages 213 and 214 of that record?

Mr. Lange: Now, if the Court please, we object to any stipulation that may have been made——

The Court: Let me see what it is.

Mr. Lange: —before the Railroad Commission. The Court is trying the case on the evidence introduced before it here.

The Court (after reading portion of record referred to above): I understand you are offering this as a stipulation made and entered into before the Railroad Commission?

Mr. Coates: It was made and entered into at the hearing of this case before the Railroad Commission. It is the same stipulation referred to in the opinion and order of the Commission, and I am sure the Court has read it completely.

The Court: I have read it. I think it is admissible, gentlemen. Both sides have pleaded you had such a stipulation, and they are offering it here as a stipulation made up there at that hearing before the Railroad Commission.

Mr. Lange: We except.

[fol. 18] Q. Please read such stipulation, Mr. Beck.

Mr. Bobbitt: I would like to understand the theory upon which the Court bases his ruling.

The Court: Better retire the jury. I don't want my theories of the case to get before the jury.

(Thereupon the jury were retired from the courtroom.)

The Court: In this case the plaintiff pleads an order of the Railroad Commission, pleads it as a valid, subsisting order, asking an injunction of this Court to enforce it. Supporting that pleading the plaintiff has introduced in evidence what purports to be an opinion and order of the Railroad Commission; and the defendant says that order is unjust, unreasonable, discriminatory and confiscatory as to them. Now, that is the question for this Court to determine, whether it is unjust, unreasonable, discriminatory and confiscatory as to them. Any matter heard before the Railroad Commission is proper to be heard here in order to determine whether they did make such arbitrary and unreasonable and discriminatory order. He is offering this here, as I understand it, to show that you had a stipulation, and at least that much could not be arbitrary if you gentlemen agreed on it up there. So I think it is admissible.

Mr. Lange: Of course, this is a trial de novo, and we are not bound by that stipulation in this proceeding.

The Court: Certainly you are not bound by that stipula-
[fol. 19] tion in this proceeding. I am admitting it on the theory that it is admissible as showing whether the order of the Railroad Commission is unreasonable, arbitrary, confiscatory, and discriminatory.

Mr. Lange: But is not binding here in this proceeding.

The Court: You haven't agreed it is binding here, have you?

Mr. Lange: No, sir.

The Court: Well, the Court has not ruled that it was. Call the jury in.

(Thereupon the jury were returned to the Court room.)

By Mr. Coates:

Q. Please read the stipulation, Mr. Beck.

A. This is — statement by Mr. Coates: "The City of Laredo and ourselves have reached an agreement on one thing, and as preliminary to the stipulation I am about to enter into the record, I will state the purpose of it; the utilities companies in this case have not inventoried and appraised the production properties, including the wells, which are used and useful to serve gas to the City of Laredo, but instead, and in order to simplify the matter as much as possible, have used a price of 5 cents per thousand cubic feet for gas at the mouth of the well; in the accounting figures for the South Texas Gas Company, the purchase price is computed at 5 cents per thousand cubic feet, and that is shown as the cost [fol. 20] of the purchase price of gas in the accounting exhibits that are still to be introduced. It has been agreed and stipulated between Texas Border Gas Company and South Texas Gas Company that for the purposes of this case and all purposes of this case, the fair prevailing market price, and the fair worth of gas in the Laredo area at the mouth of the wells is 5 cents per M. *D*. F.

"Mr. Bobbitt: That is correct, but that does not mean, of course, that there is not plenty of gas available that could be acquired at a lower price.

"Mr. Coates: No, and it does not mean there is not some gas that would cost you more, but for the purposes of this case, and for the purpose of fixing the price of gas to start

with, it is stipulated that the fair prevailing price shall be treated in this case for the purpose of fixing rates, and finding a net return, and a net rate of return, and so forth, at 5 cents per thousand dubic feet at the mouth of the well.

"Mr. Bobbitt: That is correct.

"Commissioner Thompson: That will mean that we will not be given the burden of figuring reserves and depletion and so on; we are very glad to have this stipulation. It saves us lots of study.

"Mr. Coates: It saves us some, too"

Mr. Coates: If there is anything further in this record relating to that stipulation, it is agreed here and now by [fols. 21-107] United Gas Public Service Company that if any of the attorneys here find it, that it may likewise be introduced in evidence, either in limitation, or extension, or in explanation of the stipulation here introduced. It is my thought that that is the complete stipulation.

Mr. Bobbitt: That is our understanding.

The Court: It is agreed that if there is anything else you may read it, too.

[fol. 108] Testimony of E. B. NEISWANGER

Cross-interrogatory No. 5: Is it not a fact that on January 1st, 1928, the rates for natural gas (used as fuel) paid by the Central Power & Light Company to the Border Gas Company in the operation of the Central Power & Light Company's Laredo plant were as follows: 20c per M. C. F. for all natural gas purchased up to 10,000 M. C. F. per month; and 16c net per M. C. F. for all natural gas purchased in excess of or over 10,000 M. C. F. per month?

To the 5th Cross-interrogatory he answers: Yes, for the portion used as fuel for steam operation.

Cross-interrogatory No. 6: Is it not a fact that the 16c rate referred to in the preceding cross interrogatory was arbitrarily increased by the Texas Border Gas Company to 18c per M. C. F. shortly after March, 1928, when the Laredo gas distribution system was taken over by the said Texas Border Gas Company; in connection with this interrogatory, please state when the said 18c increased rate went into effect and how long it remained in effect, as reflected in the

monthly purchases of natural gas by the Central Power & Light Company and its Laredo unit, from the Texas Border Gas Company.

To the 6th Cross-interrogatory he answers: The increase in the price of boiler fuel gas from 16c per M. C. F. to [fols. 109-116] 18c per M. C. F. for gas purchased from the Texas Border Gas Company and its successors became effective on January 1, 1929 and has been continued in effect to the present date.

* * * * * * *

[fol. 117] Testimony of H. E. RANDALL

Cross-examination.

Questions by Mr. Lange.

Q. Mr. Randall, when did you first become connected with the United Gas System?

A. In 1925; that is, its predecessors.

Q. What predecessors?

A. It was known at that time as the Moody Seagraves interests.

Q. What plants did they operate in connection with this Laredo area?

A. They did not operate any.

Q. They didn't?

A. No.

Q. What part of the state, or where did those interests operate?

A. They first operated in Corpus Christi.

Q. Then you remained with them during the time that they later acquired the properties at Laredo?

A. Yes.

Q. Did you have any connection with the old Border Gas Company that operated at Laredo?

A. Not until the time the Moody Seagraves interests or the South Texas went into that group, which was in 1928.

Q. April, 1928, was the time when the old Border Gas Company was taken over by the Texas Border and South Texas and South Texas Production Company?

A. That's right.

[fol. 118] Q. In other words, the production, transmission and distribution properties were split into three companies?

A. That's right.

Q. At that time you came with these companies?

A. Yes.

Q. Did you at that time have anything to do with any negotiations with reference to building up industrial sales or planning the future of industrial sales in that area?

A. Yes.

Q. At that time, the Central Power & Light Company or its predecessor was operating its generating plant, supplying the entire Laredo district, wasn't it?

A. Yes.

Q. Laredo and the adjoining towns?

A. Yes.

Q. From that plant alone?

A. That is my understanding. I wouldn't state it for the truth; are you talking about the power plant?

Q. Yes, the power and light plant; they generated light and power for light, power and street railway operations, didn't they? Wasn't that all one operation?

A. Yes.

Q. And you heard Mr. Neiswanger's answers to the questions with reference to the amount of gas they used at that time, in 1928?

A. Yes.

[fol. 119] Q. There was no hook-up with any power lines—they didn't bring in any power; they generated it right there?

A. That is my understanding.

Q. You were the industrial manager of gas sales for that area?

A. That is true, but I would state I am not entirely familiar with all the Central Power & Light Company's lines.

Q. You were familiar with the Laredo area of it?

A. No, sir; I don't see where I would have——.

Q. I am talking about when you were with the Moody Seagraves interests in 1928, when they acquired the Laredo properties.

A. Yes.

Q. Your business as I understand it, was at that time to see that the industrial sales were held and increased. That was your main business, wasn't it?

A. That is true.

Q. Well then, the Central Power & Light Company being one of your biggest industrial users there, you were very much interested in seeing that they not only stayed but that they increased their consumption of gas there?

A. Yes, that's right.

Q. And that was a very vital part of your work, wasn't it?

A. Yes.

Q. You stated you were with the Moody Seagraves interests at that time. They had an appraisal of those properties made at the time they bought it, didn't they?

A. I think so.

[fol. 120] Mr. Coates: What properties?

Q. The distribution, transmission and production properties, comprising this system; and I will indicate to the court in a minute, what I want to develop.

The Court: No objection has been made; go ahead.

Q. You were with them when they acquired those properties that were split up into the three groups I just mentioned?

A. Yes.

Q. At that time, isn't it a fact that the Central Power & Light Company was operating quite extensively in Laredo and these little adjoining towns, or up and down the right, as you might call it?

A. Yes.

Q. They were supplying power to pumping plants along the river?

A. Yes.

Q. And their sales were increasing considerably—they were getting along quite well, weren't they?

A. They seemed to think so.

Q. And making progress?

A. They seemed to think so.

Q. Well, as a matter of fact, weren't they?

A. I was not familiar with their entire financial revenues, at all.

Q. Well, isn't it a fact that at the time these properties were taken over on an appraisal, or at the time the new set up was made of the three companies, that there was a serious

danger of the Central Power & Light Company, if its activi-
[fol. 121] ties were increased, it wouldn't result in a reduction of gas used by those pumping plants?

Mr. Coates: We object to that as not being in cross-examination of anything brought out on direct examination of this witness, and it is not material to any issue which we see in this case.

The Court: Well, I am not sustaining you on the ground that it is not in cross to anything you asked about, because they are not confined to that, but I do believe it is objectionable because it calls for a pure conclusion and speculation on the part of this witness as to a concern he doesn't know anything about, and was not connected with.

Mr. Coates: Yes, and we object to it on the grounds that it is speculative and calls for a conclusion of the witness.

The Court: Sustain the objection.

Mr. Lange: This is the purpose of it: We are prepared to show that the Central Power & Light Company's increase in sales was militating and would militate against——

Mr. Coates: We object to counsel testifying in the presence of the jury.

The Court: I will sustain the objection. You may have your bill, gentlemen, but that question as asked of this witness, I think is immaterial.

Mr. Bobbitt: They are complaining of gas sales.

The Court: If you will read that question, you will see
[fol. 122] how objectionable it is.

Mr. Lange: I will withdraw that question and ask the witness what he knows of his own knowledge of that fact, if the court please.

The Court: Proceed.

Q. Mr. Randall, at that time, in connection with your business or your work as industrial sales manager, and in connection with industrial sales, what was the price paid by the Central Power & Light Company for gas that was used and bought from the Texas Border Gas Company or the Border Gas Company?

Mr. Coates: Make the time definite; you said "at that time".

Q. I will make it definite—in the year 1928.

A. Twenty cents per thousand cubic feet for the first 10,000 M. C. F. a month, and 16 cents for all over.

Q. When was that price increased?
A. The first of 1929.
Q. How much was it increased?
A. Two cents on the bottom step.
Q. How much on the other step?
A. None.
Q. Why was it increased?
A. At that time there were certain increases in the prices of competitive fuels. We sell gas on a competitive fuel basis. Other competitive fuels had gone up; we had an increase in expenses and we thought we were entitled to a higher rate.
[fol. 123] Q. And that was why it was increased?
A. Yes. We sell gas, if I might say this, so that it will save money over other fuels. Sometimes the margin is small and other times we try to get it where there is a fair margin.
Q. At that time, or prior to the increase in 1928 or shortly prior thereto, I will ask you whether or not you know that the Central Power & Light Company, Laredo unit, at that time was contemplating either increasing their unit or putting in additional machinery there?

Mr. Coates: Are you asking this of the witness' own personal knowledge?
The Court: He asked if he knew whether or not they were contemplating.

Q. Yes, in his work in connection with the industrial sales.
A. Not to their present plant.
Q. Well, to what extent were they contemplating increasing their production there?
A. They were contemplating at that time or a little later than that time, a new plant.
Q. When was it they first took up the matter or you first had knowledge of the matter of them wanting to increase the size of their plant?
A. I didn't say—you misunderstood me. My answer to the question was that they were not contemplating any increase in their present plant, but building a new plant within the vicinity of Laredo.
[fol. 124] Q. Within the vicinity of Laredo?
A. Yes.
Q. And if they had increased the size of their plant, any increase in the size of the plant or a new plant, contemplates the increased use of gas as a fuel?
A. Yes.

Q. And would have meant an increase in the use of natural gas as a fuel?

A. Yes.

Q. Now, the Moody Seagraves interests—when did they part with their interests in these properties to the United Gas Public Service Company?

A. In 1930, I believe.

Q. And the increase in the rate for natural gas used by an electric power generating plant is a factor in their operating costs, isn't it?

A. Oh, yes.

Q. And any decrease or increase is a material factor in their operating costs?

A. Yes.

Q. In determining whether or not you are going to build a new electric plant, if you know, would that be a material factor in determining whether you would build a plant at one place or at another?

Mr. Coates: That is going far afield, speculative and calls for a conclusion of the witness, and it is not in cross-exam- [fol. 125] ination of anything brought out on direct, and we object to it on the grounds stated.

Mr. Lange: If the court please, that same character of testimony was developed in the Neiswanger deposition.

The Court: Now listen here; this testimony of course calls for a conclusion of the witness, and unless this man's experience justifies him in knowing whether or not * * * however, I believe he is qualified. I overrule the objection.

Mr. Coates: Note our exception.

Q. Read the question.

(Whereupon the last preceding question, towit: "In determining whether or not you are going to build a new electric plant, if you know, would that be a material factor in determing whether you would build a plant at one place or at another?" was read to the witness.)

A. Not altogether.

Q. Well, to what extent?

A. There is more than your actual operating costs that enter into a location of a plant; the principal one is your markets.

Q. That is true. Referring back to your familiarity with the Laredo markets again, the Central Power & Light Com-

pany unit at that time, before it was connected with the other power units, was furnishing the entire area at Laredo, wasn't it, with power and light?

A. That is my understanding.

Q. And at that time they had no other line serving Laredo with power and light?

A. To that I answered while ago that I was not entirely [fol. 126] familiar with all their transmission lines, and could not answer that question.

Q. In 1928, at the time you were with the Moody Seagraves interests in this capacity as sales manager for industrial sales, the Laredo unit of the Central Power & Light Company was not connected with any power lines outside; it was generating all its electric power at Laredo?

Mr. Coates: Is that a question of the witness or is counsel testifying now?

Q. I am asking the question: Isn't that a fact?

A. As I answered you before, I am not familiar with all details of the Central Power & Light Company's transmission lines.

Q. Were you at that time?

A. No, sir.

Q. How long were you in that Laredo area?

A. I didn't spend all my time in that Laredo area, but covered the entire system for the United Gas System or its predecessors.

Q. And do you know when they hooked up the Laredo area from the outside with other lines?

A. From Mr. Neiswanger's deposition, he give it——

Mr. Coates: Do you know of your own knowledge?

A. No sir. He said, I believe, 1931. He stated to me in several conversations that they intended to do it several years ago but didn't get it done as soon as they expected.

Q. It was not in 1928 or 1929 from his deposition.

[fol. 127] Mr. Coates: Have you asked the question of the witness, or made a statement?

Q. I am going to ask you the question, whether it was in 1928 or 1929 or later?

A. I couldn't say.

Q. You do not, then, as manager of industrial sales in 1928, know whether they were hooked up with any outside power line?

A. No, sir.

Q. I will ask you this question; if at that time, in 1928, they were not hooked up with any outside power lines and were generating all their power right at Laredo in that unit which your company was serving with gas, if they were contemplating building a new unit, would the cost of natural gas as fuel be a material factor to guide them?

A. It would be some factor, yes.

Q. What do you mean by some factor?

A. That is not the entire cost of an electric plant.

Q. How material would it be?

A. To my best recollection the power costs of a power plant is about 20 to 25 per cent of their manufacturing costs.

Mr. Coates: That does not take into account any transmission or distribution costs?

A. No, sir. That is the actual manufacturing costs in the plant.

Q. Well, if you have a segregated unit that is not connected with any power lines outside, and there is no loss of lines, you just contemplate that unit—you are not con- [fols. 128-130] templating an interconnected unit but only a segregated unit; isn't that true?

A. That is correct.

* * * * * * *

[fol. 131] Questions by Mr. Bobbitt:

Q. The operation of this plant furnished an outlet for a [fols. 132-134] large amount or a large market for industrial gas consumption, did it not?

A. No, sir; I wouldn't say it was a large market for industrial gas.

Q. They burned a lot of natural gas in that refinery, didn't they, there in Laredo, when it was in operation?

A. Do you mean large sales, compared with other refineries?

Q. How much, more or less——

The Court: Isn't the amount already in the record?

Mr. Coates: I think the dollars amount but not the M. C. F.

Q. I don't think so, Your Honor. I am talking about when it was in operation.

The Court: Well, I may be wrong about it, and you can get it in there quicker than we can talk about it; go ahead.

Q. Approximately how much gas did this Motor Fuel Products Company consume when it was in operation?

A. If I might show the exact amount here, I think I have it. For the period 1928, through March, 1929, it was $2,959.00; and from April 10, 1929, to December 31, 1929, it was $7,103.60. January 1, 1930, through December 31, 1930, it was $16,347.80.

Q. That is money paid by that concern for natural gas?

A. Yes.

Q. To the Texas Border Gas Company?

A. Yes.

Q. And the same concern owned both of them?

A. Yes.

* * * * * * *

[fol. 135] Friday, March 9, 1934

Afternoon Session: 3 P. M.

H. E. Womack, recalled for Cross-Examination, testified as follows:

Cross-examination.

Questions by Mr. Lange:

Q. Mr. Womack, what is your present position with the United Gas Public Service Company?

A. I am an accountant.

Q. An accountant?

A. Yes.

Q. What is your official position with them? What are you designated on their books as—what capacity, what position do you occupy?

A. That is it.

Q. Accountant?

A. Yes, sir.

Q. General accountant for the System?

A. Well, I have worked on the accounts of all the com-

[fol. 136] panies comprising the United Gas System.

Q. When you speak of the United Gas System, as reflected in Exhibit 2, page 4—will you please turn to that page of your exhibit?

A. (Witness turns to page of exhibit.)

Q. That comprises the companies enumerated on that page—United Gas Public Service Company, United Production Corporation, Southern Gas & Fuel Company, Northern Texas Utilities Company, Houston Gulf Gas Company, Houston Gas and Fuel Company, Southern Gas Company, Southern Gas Utilities, Inc., and Compania Mexicana de Gas, S. A.—those comprise the United Gas System, and you are accountant for that system?

A. I am employed by the United Gas Public Service Company.

Q. Then your work is accounting work for any of the companies enumerated in that system——

A. Yes.

Q. —set forth in here?

A. Yes; it has been and it is.

Q. The United Gas Public Service Company is, of course, only one of the companies enumerated on that page?

A. Yes.

Q. How long have you held that position, Mr. Womack?

A. Practically three years.

Q. You testified in the hearing held before the Railroad Commission in this case—held at Laredo in 1933?

[fol. 137] A. I did.

Q. Mr. Womack, referring to the defendant's exhibit No. 1, page 1, on page 1 is reflected the twelve months period ended December 31, 1932; is that correct?

A. Yes.

Q. And in the Exhibit 3, page 1, the twelve months operating period ended December 31, 1933 is reflected?

A. For the City of Laredo only.

Q. In preparing these exhibits did you make any adjustments to the Company's books?

A. Yes.

Q. Will you please itemize those and let us have them?

A. You want that for the twelve months through December, 1932?

Q. 1933 first.

A. I presume you want these adjustments as to figures rather than adjustments as they would affect the City of Laredo?

Q. Let us have the total figures first.

A. Yes. The first item that you might consider as being an adjustment is the charge for gas purchased.

Q. Charged for gas purchased?

A. Yes.

Q. Now, that appears on page 2 of Exhibit 3?

A. It does.

Q. In your exhibit it appears as $17,839.25?

A. Yes.

Q. And what do the books reflect that item to be?

A. The company does not make a charge as between dis-
[fol. 138] tricts or as among districts for the purchase of gas. That item is carried as a whole on the books of a particular company. It was necessary to show the cost of gas as applying to the City of Laredo.

Q. I want to know what the actual book charges are for gas—gas purchased that went to Laredo.

A. I stated that the Company does not make a charge as among districts for cost of gas. The records are not kept in that manner.

Q. Well, you know the volume of gas that went to Laredo that is embodied in this charge, don't you?

A. Yes.

Q. What was the price per M. C. F. for this gas? Give me the volume and the price per M. C. F. paid for it.

A. I stated twice that the company does not make a charge on its records as among districts for costs of gas. Now, I can give you the volume that I have included here in the purchase price that I have shown here.

Q. All right; what is the volume?

A. 356,785 M. C. F. at a pressure base of 2 pounds 14.7.

Q. Is that set up at a price of 5 cents per M. C. F. or what price?

A. I have included here at the stipulated price of 5 cents.

Mr. Lange: Of course, we are not bound by the 5 cents stipulated. That is a conclusion of the witness. I moved to strike "stipulated" out.

[fol. 139] The Court: You move to strike out "stipulated price"?

Mr. Lange: Yes; we want the actual price he set it up at on the books.

The Court: I take it you mean the price stipulated before the Railroad Commission?

Mr. Lange: Yes.

The Court: You don't mean to say any stipulated price for this year?

Mr. Lange: No; I don't.

Q. All right. Go ahead. That is for the calendar year period ended December 31, 1933?

A. It is.

Q. Now, can you give us the wells from which that gas was delivered to the line?

A. Yes; the gas that was delivered into the lines for use in serving consumers headed towards Laredo from the fields was produced from the George S. Marshall Charles Webster No. 1, the Snowden McSweeney——

Q. Can you after each well give me the volume so you won't have to go back to it—the total amount delivered from each well?

A. Well, it will delay it.

Q. It will?

A. Yes.

Q. All right; well, go back to it then. First, you gave the George S. Marshall?

A. Yes, Webster No. 1, the Snowden McSweeney A. C. de la Garza No. 2, the Associated Oil Company Webster [fol. 140] F-1, Foster-Barnsley de la Garza No. 2, Washington, Texas Barnsley No. 1, E. A. Sterling A. C. de la Garza No. 1, E. A. Sterling A. C. de la Garza No. 2, Jennings No. 10. That is all.

Q. That comprises all the wells?

A. Yes.

Q. Can you give me the gas delivered from each—total volume of gas delivered from each for the twelve months period?

A. This volume I am going to give you is at more than one pressure base.

Q. All right; you can designate the pressure base, can't you?

A. Yes; I can give the pressure base at the same time.

Q. Can you give the purchase price from each well as you go, or do you have to go back to that?

A. These figures I have given you, with the exception of the Jennings well, are purchase wells. As I understand, you have not asked for the volume of production yet, but just for the purchased.

Q. As you give me the volume from each well and name it, I want the price the voucher shows was paid for that gas.

Mr. Coates: As I understand it, you have not given him the gas produced from the Company-owned well?

Q. This is just from non-company owned wells?

A. Yes; with the exception of the Jennings No. 10. The George S. Marshall Charles Webster No. 1, at a pressure base of 2 pounds 14,4, 54,865 M. C. F. Did you ask for the price?

Q. Yes.

[fol. 141] A. At a price of 5 cents. And these prices I am going to give you are the prices which the Company paid for the gas.

Q. Yes.

A. They are not the total costs of the gas even in these wells.

Q. It is the price the Company paid for the gas?

A. It is the price the company paid only for the gas it bought.

Q. All right.

A. Snowden-McSweeney A. C. de la Garza No. 2, at 2 pounds 14.4, 70,079 M. C. F., the purchase price of that gas was 4 cents. Associated Oil Company's Webster F-1, at pressure base of 2 pounds, 14.4, 53,783 M. C. F. at a purchase price of 5 cents. Foster-Barnsley A. C. de la Garza No. 2, at 2 pounds 14.4 pressure base, 69,843 M. C. F., at a purchase price of 4 cents. Washington, Texas, Barnsley No. 1, at a pressure base of 2 pounds 14.4, 58,804 M. C. F., at a purchase price of 4 cents. E. A. Sterling A. C. de la Garza No. 1, at a pressure base of 2 pounds 14.7, 56,540 M. C. F., at a purchase price of 4 cents. E. A. Sterling A. C. de la Garza No. 2, at a pressure base of 2 pounds 14.7, 24,418, at a purchase price of 4 cents per M. C. F.

Q. That includes all the non-company—that is wells owned by others than the company?

A. That is correct.

Q. Or any subsidiary?

[fol. 142] A. That is correct.

Q. Now, Jennings No. 10?

A. You want the production from that one?

Q. Yes.

A. 428,513 M. C. F. at a pressure base of 2 pounds 14.4.

[fol. 143] Q. And what is the price of that?

A. That was not purchased.

Q. You mean that was not purchased from—Who was the owner—in whom is the ownership of that well?

A. The United Gas Production Corporation produces that gas—The United Production Corporation.

Q. And what does the United Gas Public Service Company pay for it?

A. I can't answer that question just now.

Q. Can you find that from the records of the Company?

A. Yes, I could find that from the records I have at the hotel, but I don't have it here.

Q. And also on what basis they pay the royalties on that?

A. Yes.

Q. Oh, yes,—do you know the location of that Jennings 10 Well, Mr. Womack, as to whether it is in the West Jennings Field or not, or the East Jennings Field, or what area it is located in?

A. I have never seen that well.

Q. You don't know, or do you know the location of the wells in those fields?

A. No, I don't.

Q. You remember at the time we had the hearing before the Railroad Commission there were two fields—the West and the East Jennings gas fields?

A. Yes.

[fol. 144] Q. With reference to those two fields, do you know in which one this Jennings No. 10 is located? Would your records——

A. Oh, yes.

Q. —that you have either here or at the hotel show that?

A. Yes.

Q. You have got that?

A. Yes.

Q. But you don't have that here?

A. No, I have it at the hotel.

Q. Well, you will get those for us, then. Now, these deliveries from the Jennings No. 10, making a total of 428,513 M. C. F., what part of that was delivered to the Laredo line?

A. The method that I used in computing the production of gas in all that Jennings area flowing toward Laredo was a proportionate part of the gas being produced from these Jennings Field wells.

Q. What proportionate part?

A. It was on the basis of the volumes of deliveries to the check meter in the Jennings Field towards Pescadito and the check meter in the Jennings Field towards Roma-Monterey. It was on the basis of the volume of deliveries to each of those as compared with the total volume produced from all wells.

Mr. Coates: You are referring to the transmission line check meters?

A. Yes.

[fol. 145] Q. Well, what per cent of that 428,513 M. C. F., then, did you allocate to Laredo?

Mr. Coates: Mr. Lange, are you asking about the Laredo city gate, or what is generally referred to as the Laredo area?

Mr. Lange: Flowing towards the Laredo area.

Mr. Coates: I see. Well, that is what I understood, and that is what I think the witness understands.

A. One point five three three per cent.

The Court: Do I understand your figures correctly as being less than two per cent?

A. Yes. That is all the gas produced, Judge, in that Jennings Field as being applicable to the line leading from the Jennings Field towards Laredo.

The Court: That is what I understood.

Q. How many thousand cubic feet would that be?

A. Of the production from this particular well?

Q. Yes.

A. I have not computed that. It will take me some little time—I have to compute that.

Q. Will that take you some time to compute?

A. Well, I will have to multiply the figure by the percentage.

Q. Well, will you make a note of that, then, if it delays—I would rather have it right now; it probably will be in its regular order.

The Court: If he can calculate it in a minute I will give him that time.

[fol. 146] A. Yes—yes, I can calculate it in a minute.

Now, I have forgotten the figure that I have told you was the production from that well.

Mr. Coates: Do you mind if I have Mr. Davis check you on your calculation?

A. No—no.

Mr. Coates: I know you can figure better than anybody, but a witness figuring on the stand, I would like to have some one check him.

A. Yes, that will be all right.

Mr. Coates: Will that be all right?

The Court: Yes; everybody in the court-room can check him—the jury and everybody else. We are all doing our level best, and any man is liable to make a mistake in putting figures down. What was that—four hundred and twenty-eight thousand and what?

A. Four hundred and twenty-eight thousand five hundred and thirteen. (Witness makes calculation.) Six five six nine M. cubic feet.

The Court: How many cubic feet is that?

A. Six thousand five hundred and sixty-nine.

Q. Now, under this item of Gas Purchased, page 2 of Exhibit 3, what other expenses, if any, do you say you included?

A. Purchased Gas Expenses is the first item.

Q. Then Purchased Gas Expenses—what do they include?

A. They include a charge for transporting gas into the Carolina-Tex field made by the Southern Gas Company to [fol. 147] the United Gas Public Service Company of one cent per M. C. F.

Q. One cent per M. C. F. Southern Gas is one of the companies included in the United Gas system in your exhibit—this Exhibit 2?

A. It is.

Q. Any other items or item in that Purchased Gas expenses account?

A. No, that is the only item.

Q. Does that include all of it?

A. That is the only item.

Q. That is the only item?

A. Yes.

Q. Now, what method of allocation did you pursue with reference to Laredo in compiling this exhibit?

A. In compiling this exhibit?

Q. This one item on page 2, Purchased Gas expenses.

A. I took the total volume of gas transported by the Southern Gas Company through its gathering system in the Carolina-Tex. field and multiplied that by the one cent and divided that as between the towns and the delivery points, including the city of Laredo, on the basis of the proportion of volumes delivered to those points.

Q. Now, do you anywhere in Exhibit 3 include any other gathering charge as an operating cost?

A. Any other gathering charge?

[fol. 148] Q. Yes,

A. Not from the Carolina-Tex. field.

Q. From what other field, if any?

A. I do from the Jennings Field.

Q. All right. Where does that appear?

A. It appears on the transmission section of expenses.

Q. On that same page?

A. Yes.

Q. Page 2?

A. Yes.

Q. Where—which particular item?

A. It appears under Superintendence and Operating Labor; it appears under Operating Supplies and Expenses; it appears under Maintenance of Lines and Equipment. That is all.

Q. How much appears in each?—can you give me that?

A. Yes. Under Superintendence and Operating Labor, $520.72; under Operating Supplies and Expenses, $417.54; under Maintenance of Lines and Equipment, $434.17. That is all.

Q. Is that the total for that district?

A. No; that is the total applicable to the city of Laredo.

Q. To the city of Laredo?

A. Yes.

Q. What is the total for the district?

A. You mean for the district in which the Jennings Field is located?

Q. Yes. What is the name of that district—as far as the [fol. 149] company's books are concerned, how is that district designated?

A. It is the Beeville district of United Gas Public Service Company.

Q. The Beeville district?

A. Yes. The total for the Beeville district in those items that I have mentioned is $3,850.99.

Q. Now, by what method of allocation did you arrive at those last three named figures that you just gave us?

A. They were apportioned first as between several sectors included in that entire area down there on the basis of a combination of lineal and three inch equivalent miles of pipe. That gave a per cent to what I term the Laredo sector, and that Laredo sector from that point to the Laredo distribution system on the volume of deliveries at the various delivery points.

Q. Is that the same basis you used in connection with the transmission system?

A. That is the same basis that I used on most of the accounts included in transmission expenses.

Q. Which accounts—can you designate those?

A. Can I?

Q. Yes.

A. There are a number of them. Yes, I can designate them.

Q. Do they appear in that exhibit or not?—you are still on that exhibit page 2?

A. That applies to everything included under transmission except the item pipe line rentals.

[fol. 150] Q. All items under transmission, excepting the item Pipe Line Rentals?

A. Yes. Naturally now, that was after making adjustments which you started out to ask for earlier in the day, but I hadn't gotten back to — yet.

Q. The figure of $3,850.99 from the Beeville district—can you tell us from what wells that was taken?

A. From what wells it was taken?

Q. Yes, in the district, that are included in that item?

A. I don't believe that I can answer that question. I don't believe there is an answer to the way you framed your question.

Q. Give us the wells that are included in that district—have you got the wells included there?

A. Yes, I have that. The cost of those gathering charges applied to gathering lines of the United Gas Public Service Company in the Jennings field.

Q. Now can you give us the names of the wells that that gathering line serves?

A. I can not..

Q. Who could give us those?

A. I presume the superintendent could give you those, or possibly some of the engineers could give those; some of the workmen along the line could give you that.

Q. Your records would not reflect the names of the wells on those gathering lines?

A. Now, I speak not from my own knowledge but I pre- [fol. 151] sume the company has maps showing all that. That is merely a presumption on my part.

Q. In order to be able to get the matter of the adjustments settled, have you those adjustments as to the figures on the company's books, when they were changed in this exhibit?

A. I can name those adjustments.

Q. If you will give us those now.

A. You were talking about the pipe line side—the transmission side -while ago; I presume you want that first?

Q. Yes.

A. And you of course want top figures again?

Q. Yes.

A. I increased gas purchase expense in the amount of $90.40. Insofar as the city of Laredo is concerned, I decreased pipe line rentals in the amount of $2,320.00. Now, this is getting into other journal sections than the transmission expense there. I decreased uncollectible bills $219.72.

Q. I think as we go along, Mr. Womack, I wanted to ask you as to each item, why you made the adjustment, and we might do that after each item, so we will not have to go back to it. The first one you mentioned was with reference to the pipe line rental item?

A. The first I mentioned was purchased gas expense. I increased that $90.40.

Q. Why was that increased?

A. It was to correct an error in computing the one cent [fol. 152] transportation charge in the Carolina-Tex field on the records during the year 1933.

Q. Now, which is the next?

A. I mentioned that insofar as the City of Laredo was concerned, I decreased pipe line rentals the sum of $2,300, as a top figure.

Q. Why was that change made?

A. This decrease was the amount of rentals paid by the United Gas Public Service Company to the Southern Gas Company for the rental of a pipe line during the months of November and December, 1933. Since there were some new wells opened, making an additional supply of gas available to the city of Laredo about November first of 1933, this pipe line rental, in my judgment, was an unnecessary charge from that date on, into the City of Laredo. This total amount of $2320.00 did not go to the City of Laredo. That was a top figure.

Q. Just to identify that pipe line to which the rental applied: Is that the pipe line situated in what is known as the East Jennings field, if you know?

A. I know generally where it is located. I believe your idea of the East Jennings and the West Jennings field is somewhat different from my own idea. It is located somewhere in that general Jennings area.

Q. All right; now which is the next item that you adjusted?

—. I decreased uncollectible accounts $219.72.

Q. Why was that done?

A. The reason for this reduction was that uncollectible [fol. 153] accounts occurring on the pipe line side, and this was all on the transmission side, should not be applied as against the City of Laredo, and I did not charge any uncollectible accounts into the City of Laredo except those that were incurred there.

Q. Which is the next item?

A. The re-conditioning of the Jennings-Pescadito six inch line, in the amount of $23,101.50.

Q. Where does that item appear, and under what heading on page 2?

A. It appears under maintenance of lines and equipment, pipe line. Included also in that account, the re-conditioning of the Carolina-Tex-Pescadito six inch line, the charge for which was $10,007.17.

Q. Why was this adjustment made?

A. Those charges appeared on the records of the company as maintenance of the San Antonio district, and in so far as the company is concerned, they are no doubt proper charges, but for rate making purposes, I considered those as being replacements or unusual maintenance, in

that they were large jobs and I therefore eliminated them from these accounts.

Q. Which is the next one?

A. Those are all the items that I eliminated from what the company terms pipe line district expense.

Q. Now, do you segregate your transmission system expense to districts on your books?

A. Yes.

Q. What district is the Laredo area in—what transmission district?

[fol. 154] A. San Antonio.

Q. And in what district is the Laredo distribution system?

A. Laredo. That is the Laredo distribution district; the Laredo distribution system is in the Laredo distribution district.

Q. And what basis of allocation do you use with reference to the transmission line, so far as that district is concerned?

A. In so far as the charges arising in the San Antonio district are concerned, the basis first to the South Texas gas area from the total of the district of lineal and three inch equivalent miles of pipe, each being given equal weight.

Mr. Coates: Will you explain that term, Mr. Womack?

A. By lineal miles of pipe is meant the length of the pipe in miles. By three inch equivalent miles of pipe is meant that the pipe is considered as though it were all of it three inches in diameter, for the purpose of getting a common diameter of the pipe. It is the reduction or the increase of all sizes of pipe to a common size, so that that basis was made on the length of the pipe and on the size of the pipe, each being given equal weight.

Q. Now, with reference to this San Antonio transmission district, will you give us your allocation factors that you used in connection with that?

A. I have not given you the apportionment clear into the City of Laredo yet.

Q. Let me have that first.

A. You want the method of apportionment into the City of Laredo?

[fol. 155] Q. Yes.

A. On the basis of lineal and three inch equivalent miles

of pipe from the South Texas gas area to the Laredo sector. From the Laredo sector to the Laredo city gate on the basis of deliveries of volumes of gas to the various delivery points. From the Laredo city gate to the city of Laredo on the basis of volumes of sales.

Q. Why did you use those factors?

A. Why did I?

Q. Why, in your opinion, did you choose those factors?

A. To me, those factors bear the closest relationship to the facts.

Q. Are there any other known methods of allocating such expenses?

A. Expenses of this character?

Q. Yes.

A. Yes, there are a number of methods that have been used at different times by different people.

Q. Now, if you will give me those percentages that I just asked for.

A. I believe I stated a moment ago that this did not apply to the pipe line rental; I stated that these percentages do apply to charges made in the San Antonio district, down to the City of Laredo, except the pipe line rental. Those percentages from the San Antonio District to the South Texas gas area, 26.96 percent. From the South Texas gas area to the Laredo sector, 52.9 percent. From the Laredo sector to the Laredo city gate, 50.90 percent. I am giving you these [fol. 156] percents of the reduction in percentage from the South Texas gas area on. From the Laredo city gate to the City of Laredo, 36.07 percent. That is all, as I mentioned, of the decreasing percentages from the South Texas gas area.

Mr. Coates: If you don't mind, let's clear that up at this time, Mr. Lange.

Mr. Lange: That will be all right, Mr. Coates.

Mr. Coates: In other words, from the San Antonio district down to the South Texas gas area your percentage was 26.96?

A. Yes.

Mr. Coates: And from the South Texas gas area to the Laredo city gate, your percentage stated was 52.9 percent?

A. No, it is not that much.

Mr. Coates: I mean it is 52.9 percent of the 26.96 percent; is that correct?

A. From the South Texas gas area to the Laredo sector is 52.9 percent of the 100 percent from that point.

Mr. Lange: Probably, Mr. Coates——

A. I believe I could straighten that out, if I may in my own language.

[fol. 157] Q. Just proceed, then, Mr. Womack. Just proceed as you desire.

A. From the San Antonio District to the South Texas gas area 26.96 per cent of those San Antonio district charges that I left in there. From that point on to inside the City of Laredo is a net of 36.07 per cent of that apportionment; inside the City of Laredo 36.07 per cent of 26.90 of the San Antonio district.

Q. Now, will you give us the total number of miles that takes into consideration?

A. There are in the San Antonio district 461.62 lineal miles of pipe, of which the South Texas gas area total lineal mileage is 135.48. In the San Antonio district there are 1526.58 of 3-inch equivalent miles of pipe, 374.88 of which are in the South Texas gas area.

Q. Now, can you give us the total, both lineal and 3-inch equivalent, in the South Texas area?

A. You want the sum of the two of them?

Q. The separate—the South Texas area separate from that of the Monterrey district.

A. I stated that in the South Texas gas area there are 135.48 lineal miles of pipe.

Q. Maybe this will clear it up. The Laredo sector and the Monterrey sector are separate?

A. Yes.

Q. Can you give us both the Laredo sector and the Monterrey sector?

[fols 158-179] A. Yes. You want each one of them separately?

Q. Yes.

A. In the South Texas gas area there are more than those two sectors. Now, in the Laredo sector there are 78.97 lineal miles of pipe. In the Roma-Monterrey sector 47.31 lineal miles of pipe.

Q. Lineal feet and the 3-inch equivalent, you better give it to us in all the sectors.

A. The Hebbronville line is 8.4 lineal miles long; the Bruni line .8 of one mile. The 3-inch equivalent miles of pipe are, Laredo sector 178.79 miles; the Roma-Monterrey sec-

tor 188.29 miles; Hebbronville 7.27 miles; and the Bruni .53 of a mile.

Q. That includes all sectors in that district?

A. That includes all sectors in the South Texas gas area.

* * * * * * *

[fol. 180] Saturday, March 10, 1934

Morning Session: 9:00 A. M.

H. E. WOMACK, a witness for defendant, resumed his testimony and testified as follows:

Cross-examination resumed.

Questions by Mr. Lange:

Q. Mr. Womack, yesterday afternoon we asked you to get certain items of information. Have you gotten those figures for us?—first, with reference to that general office general expense total.

A. May I ask again just what you wanted on that?

Q. The general office general expense total, the beginning point where you begin allocating as reflected by the books—the natural gas end?

A. Of those accounts that were apportioned to Laredo?

Q. No, the total, the entire total, including production, transmission and distribution—the beginning point as it appears on the books.

A. That was not exactly my understanding of what you wanted. I think I can give you that figure. My understanding of what you wanted was the total journal expenses before apportionment to those districts.

Q. Does that include production, transmission and distribution?

A. No, there is no production expense.

Q. I think, if you will recall, I explained to you that in [fol. 181] order to be able to work down we wanted the beginning point of the entire total.

A. Yes. (Witness examines his papers)

Mr. Coates: Mr. Womack, you said "yes". Does that mean that the figures you are about to give include production expense as well as transmission and distribution?

A. Yes. That total is $2,042,092.60.

Q. That represents what total?

A. That represents the total United Gas Public Service Company general office general expense.

Q. Yes, sir. That applies to the natural gas only?

A. No; included in that total are those expenses that apply to gasoline and crude oil.

Q. Well, can you give me the natural gas total?

A. The natural gas part of it?

Q. Yes.

A. I can't do that without doing some more work on it.

Q. Well, how much time will it take?

A. It will take fifteen or twenty minutes.

Q. Of course, that was the total that we inquired about yesterday.

A. It was not the total that I understood you to inquire about.

The Court: Well, Gentlemen, suppose you pass this item and go ahead with the other items and later call him back.

Mr. Lange: All right.

[fol. 182] Q. You understand now that it is the total that applies to the natural gas end of the account—production, transmission and distribution?

A. Do you want the total chargeable to natural gas operations before any apportionment to the operating departments on the natural gas?

Q. It is the total of Accounts 113-382 as it appears on your books.

A. The general office general expenses are not primarily carried in any 113 Account.

Q. Well, doesn't it represent the part that was actually paid?

A. No, it does not.

Q. Well, which account represents the total expenses—general office general expenses applied to natural gas?

A. Those accounts—the series numbers of those accounts are 154 and 150.

Q. Well, what do those accounts represent, then, as to the total general office general expenses applied to natural gas?

A. What do they represent?

Q. We want the total of the account.

A. That is what it will take me fifteen or twenty minutes to get.

Q. Well, you will get that for us?

A. Yes, sir.

Q. After you have that figure, we want the allocations to [fol. 183] both districts, 70 and 40, as you have made them.

A. You want the figure that is chargeable to operations of natural gas?

Q. Yes.

A. And the apportionments?

Q. Yes, allocated——

A. To District 70 and District 40?

Q. That is right.

A. Yes.

Q. In other words, the amount United Gas Public Service Company actually paid and allocated to those two districts, 70 and 40.

A. Well, you want the amount of general expenses that is chargeable to operations first?

Q. Yes.

A. And of that amount, the amount apportioned to District 70 and District 40?

Q. That is right.

A. All right.

Q. Well, now, the gas purchased from the Jennings No. 10, you were to get that. Have you got the volume of gas—the amount of gas purchased from Jennings No. 10? In giving your testimony yesterday you didn't have—I mean the price per cubic feet of gas taken from Jennings No. 10.

A. I believe yesterday I stated that that gas was produced by the United Production Corporation. The question you asked was the price, as I recall it, which the United Gas Public Service Company paid for it.

[fol. 184] Q. That is right.

A. And my answer to that question was that I did not know. I do not have records here in Austin that will give me that information. The question you asked me that I told you I did have here in Austin was the location of that well.

Q. You say you have the information where that well is located—do you or not?

A. I do have it.

Q. Where is it located?

A. It is located in what I would term the greater Jennings area. It is located west of the line from the Jennings field to Pescadito.

Q. I asked you yesterday with reference to the two fields as they were so designated in the Railroad Commission hearing. You recall that there were two fields that were designated in that hearing in the testimony that we adduced there. Do you recall the fact that there were two Jennings fields?

A. Yes.

Q. Designated in that hearing?

A. Yes, sir.

Q. Well, now, as to those two fields, one was designated as East Jennings Field and the other as West Jennings Field?

A. Yes, sir.

Q. Now, this Jennings No. 10, where is it located?

A. I stated yesterday that my idea of those two fields was somewhat different from your idea; that my idea of those two fields is that there is an overlap of them; in other [fol. 185] words, the West Jennings Field goes into the East Jennings Field, or the East Jennings Field goes into the West Jennings, but there is an overlap.

Q. Well, when we have a map here you can designate it on the map.

A. I can show you from a map the approximate location of that Jennings No. 10.

Q. Now, can you give us the total volume of gas gathered from the Jennings Field during this period ending December 31, 1933?

Mr. Coates: Do you mean the entire volume—the total volume of the entire Jennings Field?

Mr. Lange: Yes, and that part allocated to the Laredo area.

A. You want the total volume produced in the Jennings area?

Q. Yes.

A. One million nine hundred and three thousand nine hundred and seventy-six in cubic feet at a pressure base of two pounds fourteen point seven.

Q. Now, the part of that that was delivered to the Laredo area?

A. The part that was delivered to the Laredo area?

Q. Yes.

A. There is some unaccounted for in the gathering system in the Jennings area. I have apportioned the part of that unaccounted for as applicable to the Laredo area. The figures that I will give you as being applicable to the Laredo [fol. 186] area will include a proportionate part of that unaccounted for, together with the gas that was delivered. Is that the figure you want?

Q. Give us the total first and then the amount of the unaccounted for—the total first that was delivered to the Laredo area out of the total that you just gave us and then the amount of that that you applied to unaccounted for gas.

A. The total delivered to the Laredo area was twenty-seven thousand four hundred and thirty-one M. cubic feet at a pressure base of two pounds point fourteen from the Jennings field.

Q. During the twelve-month period ended December 31, 1933?

A. Yes.

Q. Mr. Womack, with reference to the District 70 operating expenses, will you give us the amount of those allocated to the South Texas area? Give it to us first before adjustment—the total before adjustment.

A. Two hundred and fifty thousand five hundred eighty-three dollars and twelve cents.

Q. That is the total?

A. Yes.

Q. Now the amount allocated to the South Texas area?

A. I made some adjustments——

Q. I want it before adjustment.

A. I made some adjustments before I made the apportionment.

[fol. 187] Q. Now, after you had made the adjustment and made the apportionment, what is the amount that is allocated to the South Texas area?

A. I made some adjustments before I apportioned any part of this to the South Texas area; after I made the apportionment to the South Texas area I made some additional adjustments between that point and the City of Laredo. Now, do you want the total after adjustments apportioned to the South Texas area but before any adjustments from that point to the City of Laredo?

Q. Yes.

A. That figure apportioned to the South Texas gas area, after adjustments from District 70 to the South Texas gas area, is $34,281.53.

Q. Now, give us the adjustments that you made.

A. I reduced the cost of gas purchased $127,704.26; I reduced transmission expenses $33,108.67.

Q. Any other adjustments?

A. Those were all, to that point.

Q. What adjustments did you make after you allocated, if any?

A. After I allocated——

Q. To the South Texas area.

A. In making the apportionment of those expenses to [fol. 188] the City of Laredo from the South Texas gas area I excluded uncollectible accounts in the amount of $219.72 entirely, which figure is a part of the apportioned figure from District 70 to the South Texas gas area. In so far as the City of Laredo is concerned, I reduced gas transportation and line rentals $2,300.00.

Q. Why was that adjustment made?

A. That was——

Mr. Coates: Mr. Lange, I don't like to interfere with your cross examination, but that was all gone over yesterday—I mean he told you the amount, and he explained why he made the adjustment; and this is simply repetition.

Mr. Lange: Not on this last item, I don't think, Mr. Coates.

Mr. Stout: Not on this item.

Mr. Coates: Well, I am quite certain that it was gone over, and the record will so reflect.

The Court: Gentlemen, this is going to be a long case in spite of the best we can do, so let's don't repeat anything.

Mr. Lange: No, there is no purpose of that.

The Court: Be sure about the record before you ask. I understand the Reporters are furnishing a daily transcript of it.

Mr. Bobbitt: No, sir, we are not getting any daily transcript.

[fol. 189] Mr. Stout: No, sir.

The Court: I thought you were getting one.

Mr. Stout: No, sir, and one reason why we can't get one——

The Court: You needn't state the reason. You are just not getting it; that is all I wanted to know.

Mr. Stout: Yes, sir.

Mr. Bobbitt: We have to pay for theirs, but can't get a copy for ourselves without paying for it again.

Mr. Coates: We object to that statement as entirely prejudicial, and ask that the jury be instructed not to consider it.

The Court: Yes, sir, gentlemen of the jury, you will not pay any attention to what these lawyers say back and forth to one another; it has nothing to do with the case, and they oughtn't to do it, and I will ask them not to do it any more. Go ahead, gentlemen.

Mr. Lange: Will you read the question to the witness, please?

(Thereupon the Reporter read the last preceding question, as follows: "Why was that adjustment made?"

A. My answer to that question yesterday was, in substances, as follows: I reduced the months of November and December entirely for the year 1933, for the reason that a new gathering system and wells being opened about that [fols. 190-198] time made the additional supply to be derived from other are-s from which the pipe line rental receives—from which pipe line receives its gas. That portion of the pipe line on which the rental is paid was unnecessary in so far as the City of Laredo is concerned.

* * * * * * *

[fol. 199] Monday, March 12, 1934

Morning Session: 10:00 a. m.

H. E. Womack, a witness for defendant, resumed his testimony and testified as follows:

Cross-examination resumed.

Questions by Mr. Fitzhugh:

Q. Mr. Womack, Mr. Lange asked you some questions about the position that you occupy with the company. I believe your answer to his questions was that you are an accountant. You have not specified, however, just exactly what your accounting position is. I wish you would make that plain for the jury and for us.

A. I have charge of accounting for the company in controversies over gas rates.

Q. Who is the Chief Accountant of the company?

A. I don't believe there is a person of that title with the company.

Q. You say there is no Chief Accountant?

A. No one with that title.

Q. How many accountants does the company have working for it?

A. In the entire system?

Q. Yes, sir.

A. I would say between one hundred and one hundred and fifty.

Q. Now, then, you are just one out of one hundred and fifty specially assigned to rate cases; is that the idea?

A. Yes.

Q. I believe you stated, Mr. Womack, that you are now [fol. 200] the holder of a certificate from the State of Oklahoma as a Certified Public Accountant?

A. Yes.

Q. When did you acquire that certificate?

A. About ten years ago.

Q. The present laws applying to the admission or to the obtaining of certificates as Certified Public Accountants that now apply in the State of Oklahoma were adopted about four years ago, were they not?

A. To my knowledge there has been no charge at all since I took the examination.

Q. Did the present law which now applies in Oklahoma obtain at the time that you took it?

A. I don't know of any change in the law.

Q. Did you have to take an examination?

A. Yes.

Q. In order to obtain your certificate?

A. Yes, sir.

Q. Is there any reciprocity between the State of Texas and the State of Oklahoma as to the matter of certificates?

A. I believe not.

Q. You do not hold a Texas certificate as a Certified Public Accountant?

Mr. Coates: Well, now, wait a minute. If the Court please, this man has not testified here nor has he attempted to testify that he is engaged in the general business of public

accountancy. He has testified that he is a full time employe [fol. 201] of the company. He has in answer to questions propounded by counsel testified that he is a Certified Public Accountant, and whether he is qualified to engage in the general business of certified public accountancy in Texas, not being here in that capacity, we think is wholly immaterial to any issue in the case.

The Court: I overrule the objection, because I can see what they are striking at on that point. Go ahead.

Q. You do not hold a Texas certificate?

A. No, I have not taken an examination in this State.

Q. In order to get one you would have to take an examination?

A. Yes.

Q. Now, I believe you testified, Mr. Womack, that your company uses a uniform system of accounts. Just what system is that—by whom has it been approved?

A. That classification is taken from and is patterned after the National Association of Railway and Utility Commissioners' accounting classification.

Q. Are there any regulations under which your company—are there any regulations with which your company is now compelled to comply that come from the Railroad Commission or any other regulatory commission of this State as to the form and classification of accounts that you should use?

A. Not to my knowledge. The company does file reports with the Railroad Commission, and they do set out some general title accounts.

Q. But your company is free to use whatever classifica- [fol. 202] tion of accounts it wants to?

A. As far as the State law of Texas is concerned, I believe so.

Q. Now, is there anything at all, Mr. Womack, particularly significant about the use of any classification of accounts except the fact that in adopting some classification of accounts you give your accountants a manual of instructions to guide them in entering historically on the books of the company the financial transactions of the company?

A. Standard classifications have been built up over a period of years. Naturally, over a long period of time one could get a better classification and a company following

that classification would be able to take advantage of that time spent by others in building it up.

Q. But when you say, Mr. Womack, that you have adopted a uniform classification of accounts as approved by the National Association of Utility and Railroad Commissioners you mean you have simply adopted for your company that particular manual of instructions; isn't that true?

A. I don't believe I know how to answer that question.

Q. You can't answer that "yes" or "no"?

The Court: Wait a minute. • • • All right, Gentlemen.

A. I don't believe that that question is capable of an answer "yes" or "no" without considerable explanation along with it.

[fol. 203] Q. Well, make whatever explanation you want.

The Witness: Will you repeat the last question?

(Thereupon the Reporter read the question, as follows: "Q. But when you say, Mr. Womack, that you have adopted a uniform classification of accounts as approved by the National Association of Utility and Railroad Commissioners you mean you have simply adopted for your company that particular manual of instructions; isn't that true?)

A. The accounting classification was adopted because it was believed by the company that it was a good classification, that the company naturally had to have some classification, and, as far as that is concerned, the employes have to have some sort of instructions as to the manner in which to make charges and credits to the various accounts.

Q. Well, now, that is a good answer, Mr. Womack, but I will ask you now if it is not a fact that the main thing about adopting a classification of accounts, and particularly the one you have adopted, is simply to give your accountants a manual of instructions in order to guide them in making entries of accounts on the company's books?

A. Any company has to have a chart of accounts or a series of accounts with numbers and titles in order for its employes to make correct charges and credits to the accounts.

Q. Well, just answer my question. I asked you if it was not a fact that the main thing about having a classification of accounts was not just to give the accountants working for the company a manual for their instruction in entering

the financial transactions of the company on the company's books. Now, isn't that a fact?

[fol. 204] Mr. Coates: We submit that that question has already been answered. He said it is nothing more than giving the accountants a manual with the instructions and forms——

Mr. Fitzhugh: Now, I object to counsel answering the question for the witness.

The Court: Gentlemen, don't interrupt each other.

Mr. Coates: We object to it as repetition of what has already been brought out by the witness.

The Court: Are you through?

Mr. Coates: Yes.

Mr. Fitzhugh: May it please the Court, I asked the witness a plain question capable of an answer, and I would like to have the witness answer the question without having the answer suggested by the lawyer.

The Court: Read the question, Mr. Reporter.

(Thereupon the Reporter read the question, as follows: "Q. Well, just answer my question. I asked you if it was not a fact that the main thing about having a classification of accounts was not just to give the accountants working for the company a manual for their instruction in entering the financial transactions of the company on the company's books. Now, isn't that a fact?)

The Court: I overrule the objection. Answer the question if you can.

A. That is not the entire purpose of a classification. One of the purposes of a classification is that the accountants will know where to charge and credit——

Q. Well, regardless of what classification——

[fol. 205] Mr. Coates: Well, now, let the witness complete his answer.

The Court: Let him finish.

Q. I beg your pardon. Have you finished now?

A. Yes, sir.

Q. Regardless of what classification you use, Mr. Womack, the use of the classification in itself does not prevent errors from being made on the company's books, does it?

A. To err is human.

Q. You can still make the same sort of mistakes while using the same form of classification accounts as the National Association of Railroad and Utility Commissioners use in their classification?

A. With the standard classification of accounts, errors are fewer.

Q. But you still are subject to the normal amount of human error?

A. Yes, sir.

Q. Now, the classification of accounts you use, Mr. Womack, has nothing to do with accounting theory, does it?

A. That classification is obtained on good accounting theory and practice.

Q. But the classification itself, Mr. Womack, does not expound any new accounting theory from what prevailed before the classification was adopted, does it?

A. I believe not.

The Court: Gentlemen, I kind of think we are getting into questions of what is accountancy and so forth. Let's [fol. 206] stick to the issues here. I think you have gone far enough with that.

Q. What rule has the company adopted, Mr. Womack, as to when an expenditure shall be regarded as a maintenance expenditure and when one properly chargeable to depreciation exists?

A. The rule on that is that each item or charge on each job is looked into thoroughly and it is decided whether that particular item or job is a maintenance charge or charged to something else.

Q. Well, how is the determination finally made?

A. Beg pardon?

Q. How is the determination finally made—when you get into each particular case to decide whether it shall be a maintenance charge or a depreciation and reserve charge, how is the determination finally made?

A. The purpose of the job and the magnitude of it are the things that enter into the decision, and a number of other things as well.

Q. I notice that one of your adjustments as testified to by you previously was the elimination of the expenditure of some six thousand dollars for replacement of pipe on the Pescadito-Jennings line. Am I correct in that?

A. I don't recall the amount which I did eliminate; I did

eliminate an item of replacement on the Jennings-Pescadito line.

Q. You eliminated that because you didn't regard that [fols. 207-226] as a proper charge for maintenance?

A. No, that was not the reason I eliminated that. I eliminated that item because I did not believe for the purpose of this rate controversy that it should be included in there, not because I did not believe it was a proper maintenance charge on the company's records.

* * * * * * *

[fol. 227] Recross-examination.

Questions by Mr. Bobbitt:

Q. I believe, Mr. Womack, you testified earlier in your examination here, on direct, that the gas purchased and furnished to Laredo, some of it was purchased at five cents a thousand cubic feet?

A. Yes.

Q. And some of it at four cents per thousand cubic feet?

A. Yes.

[fol. 228] Q. And some of it at three cents per thousand cubic feet?

A. No, I am sure that I didn't testify to three cents.

Q. Do you know, as auditor of this concern, whether or not they do and are now purchasing gas from producers in that area that goes to Laredo at three cents a thousand cubic feet?

A. There is no gas * * * let me get my papers here.

Mr. Coates: You are confining your question to gas purchased within the area served by the pipe lines which go to Laredo?

Q. I am just asking about the gas purchased down there in that area, some of which goes to Laredo.

Mr. Coates: What do you mean by "that area", Mr. Bobbitt?

Q. I am talking about the Laredo area, Mr. Coates; the wells right down there around the Jennings and the Carolina-Texas field, and that area down there that you take gas from.

A. There is no gas purchased for delivery to the city of Laredo at a price cheaper than four cents per M. C. F.

Q. Well, is there gas purchased that goes into the same lines that serve Laredo there, for three cents?

A. No.

Q. You are certain about that?

A. I say there is not.

Q. Now, going into this geological expense and other expense that you testified to a moment ago, incident to gas wells or production owned independently from your concern. Your company or its subsidiary owns some production there; isn't that true?

A. Yes.

[fol. 229] Q. And you furnish some of that gas produced from your company's own wells to the City of Laredo?

A. Yes.

Q. And then you purchase gas from independent producers?

A. Yes.

Q. Without taking any time or any detail as to the number, but you purchase gas from a number of independent gas producers in the Laredo area, do you not?

A. Well, several.

Q. Several of them?

A. Yes.

Q. Some of those wells from which you purchase gas from these independent producers have been producing gas a number of years, have they not?

A. I don't know.

Q. You don't know about that?

A. No.

Q. All you know about it is that the company buys the gas from these independent producers, at whatever price you may agree upon?

A. My work in connection with this case and in connection with this exhibit, covers the year 1933. I don't know as to those particular wells from which production is made, how long they have been producing.

Q. What I am getting at, you do know your company, not only for 1933, but prior years, purchased gas from independent producers?

[fol. 230] A. Yes.

Q. And some of those wells, as far as you know, have been producing gas for a number of years, have they not?

A. Well, so far as I know they may have been producing a day more than this year, or forty or fifty years.

Q. What particular geological expense or other expense Mr. Coates asked you about, does your company incur in taking gas from John Smith, for instance, who has a gas well out there on a lease, and offers to sell you that gas and you purchase gas, say, at four cents a thousand? What geological expense do you go to in the production and purchase of that gas?

A. The company and its geological department checks the value of that lease, as to what its production might be.

Q. What do you mean?

A. The geological department will look into that particular strip of country, and it will check—I am afraid I am getting so deep into geology I don't believe I can explain it.

Q. I don't think it is deep at all.

A. They do check the area of the land and whether or not, in their opinion, it will produce gas, and whether that will be gas of high B. T. U. content, and things of that nature.

Q. Well, are they concerned about how many wells this man may be able to produce, on say his forty acre lease, from which you are purchasing gas?

A. They are concerned and anticipate, in buying gas, as to whether they will have a reasonable supply of gas, and [fol. 231] whether they can expect a certain amount of gas from that one well or a number of wells on that particular lease of forty acres.

Q. But your company doesn't go out and geologize his lease for him; isn't that true?

A. Well, of course the producer first has done some work, or has had some geological work done for him; however, the company does some on its own account.

Q. It does not do it until they go to buy gas, do they? Say if a man has three gas wells on a forty acre lease, producing say 25,000,000 cubic feet of gas a day, and offers to sell that gas to your concern, and of which I think a number of such instances exist, you are interested in getting the gas, aren't you, at the best price you can buy it for?

A. Yes.

Q. You are not concerned about how much gas he has on his lease, are you?

A. Except this: The company is interested in knowing about how much gas they can expect to get from that lease and how long they can expect that lease or those wells to produce. The company, of course, first has to put in lines to that lease. It possibly, if it thinks they are not going to

get much gas from that lease, *it* has to anticipate that and make arrangements to purchase gas from other leases and from other owners.

Q. But you don't go out and spend any money geologizing the independent gas owner's leases; you just check over what he has out there and how it looks to you, and whether [fol. 232] you think it will justify building a gathering system out to his well?

A. That is some of the things we do, and that is an expense and costs money.

Q. On these particular leases, you don't know how much, do you?

A. No, I do not.

Q. That is just an estimate, and a policy that your company follows?

A. Well, there is an actual cost to all of that, of the geological department.

Q. Mr. Womack, have you any accurate statement of expenses incurred by your concern, geologizing any independent producer's lease along the lines you have testified about here?

A. No, I have not.

Q. Now, Mr. Womack, in these graphs or charts that you testified about here the other day, showing the trends of revenues to the company; in all of those calculations you used the purchase price of gas at five cents, didn't you?

A. Yes, that is correct.

Q. I think so, and not at four cents or three cents?

A. No, sir; it was at five cents.

Q. And only for a period of a year, several periods, which were taken into account in making the calculation?

A. Yes.

Q. Sometimes it is a year beginning in January, 1933, and then a year beginning in March, 1933, and then a year beginning in September. That is correct, isn't it?

[fol. 233] A. I don't believe——

A. Of course, they speak for themselves, as to that testimony?

A. Yes.

Q. Have you there, Mr. Womack, your Exhibit 5?

A. Yes.

Q. And will you turn to the last page of that exhibit, Graph No. 3? Do you have that before you?

A. I do.

Q. That page is denominated "Comparison—gross revenues—Laredo July 1928 through December 1933 with nonrecurring revenues shown." Now, the first stack, I believe you called it, or chart, includes gross revenues for the period ended June 30, 1929, and you give at the top in white $68,188.69?

A. Yes.

Q. Can you give us that figure in volume of gas that that represents?

A. No, I can't; I don't have that figure in Austin.

Q. Well, you could secure it for us, couldn't you, Mr. Womack?

A. Yes.

Q. And will you do that?

A. Yes.

Q. Yes, sir, if you will just take a note of it, please, sir. Now, you have the same information, Mr. Womack, for the next stack, the period ended June 30, 1930, with the dollars shown there as $91,603.56—will you give us the same information?

A. Yes; I will have to obtain that also; I don't have it here in Austin.

Q. And the same information, sir, for the third stack, the [fol. 234] period ended June 30, 1931, $56,415.13, and the same for the fifth stack, the period ended July 31, 1932, in volume of gas. Now, you understand what we would like to have?

A. Yes.

Q. You can secure that and will furnish it to us?

A. Yes, sir.

Q. Now, your Exhibit 6, Mr. Womack.

A. Yes, sir.

Q. Will you turn to page 2 of that exhibit, please? At the top of that page in this exhibit you state: "If the rate of 55 cents net per M. C. F. fixed in the Commission's order had been in effect during the years 1932 and 1933, operating results for such years would have been as follows: Operating revenue for 1932, $161,637.65." Now, the fifty-five cent rate never has been in effect—never has been put in effect by your company?

A. No, it has not.

Q. How did you arrive at what the operating revenues would be of $161,637.65?

A. I took the identical volumes sold during the year 1932.

Q. At seventy-five cents?

A. I say I took the volumes sold during the year 1932 to residential customers, and instead of using the rate that is in effect at the present time in Laredo I applied the fifty-five cent rate to that volume of sales to arrive at what [fol. 235] would have been the residential revenues.

Q. Yes, sir.

A. The remaining revenues—that is, the revenues derived from customers other than residential—I left as they were, as the new residential revenues to the classes of revenues, and this is the sum of all that.

Q. You assumed, of course, in that calculation, as I understand you, that if the rate had been fifty-five cents as fixed by the Commission instead of seventy — cents which you are charging, that you would have had the same sales?

A. Exactly.

Q. Exactly; that is the assumption that you proceeded upon?

A. Yes, sir.

Q. No more and no less?

A. Yes, sir.

Q. Just exactly?

A. Yes, sir.

Q. Now, how did you arrive, Mr. Womack, at the figure under the head of Operating Expenses of $125,001.40 for the year 1932?

A. Those are the figures that I showed operating expenses——

Q. It is right there on the same page.

A. They are the same expenses as I show in Exhibit No. 1.

Q. You just assumed that if the rate had been fifty-five cents instead of seventy-five the sales would have been the same and the operating expenses would be one hundred and twenty-five thousand?

[fols. 236-249] A. Yes, sir.

* * * * * * *

[fol. 250] Q. Now, referring back there, Mr. Womack, to that same exhibit—same page 2 of Exhibit 6—you use the same assumptions in arriving at what you denominate here "Net Operating Revenue"? You assumed that if the 55-cent

rate were put into effect, as directed by the Commission, instead of the 75-cent rate, which you are charging, that your Net Operating Revenue for 1932 would have been $36,636.25?

Mr. Coates: That is not the correct figure.

Mr. Bobbitt: $36,636.25.

Mr. Coates: I beg your pardon.

Q. Is that correct?

A. Will you read that question, please?

(Thereupon the Reporter read the following question: Q. Now, referring back there, Mr. Womack, to that same exhibit—same page 2 of Exhibit 6—you use the same assumptions in arriving at what you denominate here "Net Operating Revenue"? You assumed that if the 55-cent rate were put into effect, as directed by the Commission, instead of the 75-cent rate, which you are charging, that Your Net Operating Revenue for 1932 would have been $36,636.25?

[fol. 251] A. I believe I stated the manner in which I arrived at the operating revenues and at the operating expenses. Now, under the heading there "Net Operating Revenue", the thirty-six thousand dollars is the difference between the operating revenues and the operating expenses shown.

Q. Yes; we understand that; that is plain, and that is true.

A. Doesn't that answer your question?

Q. How is that?

A. Doesn't that answer your question?

Q. I think it does. Now, the same situation obtains for the year 1933 as outlined here in this exhibit. You make the assumption in arriving at operating revenue—operating expenses and net operating revenues—in arriving at those figures you assume that the 55-cent rate for domestic gas would bring the same amount of business and the same amount of dollars as your 75-cent rate which you are charging?

A. That it would bring the same amount of dollars?

Q. Yes.

A. As the 75 cent rate which we are charging?

Q. That there would not be any—let me see—just strike that question. Taking that year 1933 there now, under the heading of Operating Revenue, in arriving at that figure $138,256,85, you assume in making that calculation that the

55-cent rate, if placed in effect instead of the 75-cent rate which is in effect, your operating revenues would have amounted to that figure that you have outlined here?

[fols. 252-254] A. That is my judgment of what the revenues would have been, and that is—I believe I stated a few minutes ago, is in the light of my experience, and what I believe to be true of the conditions at Laredo.

Q. Yes, sir. Now, you are a friend, a capable accountant, and an official of this company. Will you give us, please, in short, so we can save as much time as possible, just how you arrive—the method you used in arriving at your figure of $138,256.85 for the year 1933 Operating Revenues?

A. Just how I arrived at that?

Q. Yes; just your computation—just tell us how you arrived at that figure.

A. That figure is the sum of revenues derived from residential, commercial, industrial, governmental, and municipal sales, and re-connect charges. All of them, except the residential revenues, I left as they were actually in the year 1933; I computed the residential revenue that is included in this figure at the Commission's order rate of 55 cents, and included that figure with the others to reach this total.

Q. And I say you assumed that the rate of 55 cents would not cause any more consumption of gas, or bring any more sales of gas to your concern than the 75-cent rate?

A. Well, I would not call it an assumption. That is my opinion and judgment.

Q. Well, what would you call it?

A. That is my opinion and judgment on what this revenue would have been.

* * * * * * *

[fol. 255] Monday, March 12, 1934

Afternoon Session: 2:00 P. M.

H. E. Womack, resumed the witness stand, and continued his testimony on cross examination as follows:

Cross-examination resumed.

Questions by Mr. Bobbitt:

Q. Mr. Womack, have you your Exhibit 1 there, please, sir?

A. Yes.

Q. And Exhibit 3?

A. Yes.

Q. Exhibit 1, under the head of Residential Sales, I believe your exhibit shows that for the year ended December 31, 1932 your gross revenue was $119,489.41; is that correct?

A. Derived from residential business, it is.

Q. Yes, derived from residential business; and for the year ended December 31, 1933, the gross revenue derived from residential business was $110,686.26?

A. Yes.

Q. Is that correct?

A. Yes.

Q. That represents a loss in the difference of those figures for the years 1932 and 1933?

A. Yes.

[fol 256] Q. A decrease?

A. Yes; the revenue was less in 1933 for residential users of gas.

Q. In the amount of the difference of those figures?

A. Yes.

Q. Likewise for those two years there was a decrease in the number of consumers—number of meters taking gas—residential consumers; isn't that correct?

A. How is that?

Q. What I am getting at is the number of residential meters there December 31, 1932, and the number on December 31, 1933, the number of meters for residential consumers?

A. What do you want, just the month of December only?

Q. I want the number of meters in use serving gas to residential consumers on December 31, 1932, or the average for the year that you set up at that time?

A. Which do you want?

Q. Either one or both, whichever is the most convenient there.

A. The average for the year 1932 was 4214; the average for the year 1933 was 4177.

Q. There is a decrease in the number of meters to the extent of the difference in those figures?

A. A slight decrease—37.

. . . . . .

[fol. 257] Q. Now, Mr. Womack, turn to Exhibit 3 at page 4, if you please, a moment. On the question of Operating Expenses for the twelve months ended December 31, 1933, that exhibit there undertakes, as I understand, to give the amount of such expenses allocated to Laredo for that period?

A. It gives the amount that is apportioned or that has been distributed to Laredo for that period.

Q. For that period?

A. Yes.

Q. Let's get this clear. What is the distributing company that is distributing gas in the City of Laredo? What is the name of that concern?

[fol. 258] A. United Gas Public Service Company.

Q. Well, isn't there a subsidiary, Texas Border Gas Company?

A. No.

Q. It took the place of the Texas Border Gas Company—the United Gas Public Service Company took the place of the Texas Border Gas Company as a distributor in the City?

A. Yes.

Q. Is that correct?

A. Yes.

Q. Did the United Gas Public Service Company likewise take the place of the South Texas Gas Company—the transmission company?

A. Yes.

Q. So those two companies are out of existence; is that right?

A. Yes.

Q. And the United Gas Public Service Company is doing all of the work that they formerly did; is that correct?

A. Yes.

Q. What is the total amount, Mr. Womack, of the Supervision and Consultation fees paid by the United Gas Public Service Company for the period—for the twelve months ending December 31, 1933, of which Laredo pays a part?

A. $116,578.87 for 1933.

Q. What is that figure?

A. $116,578.87.

Q. That is the total amount for that item paid by the [fol. 259] United Gas Public Service Company?

A. It is.

Q. And the amount allocated to the City of Laredo was as set up in this exhibit, $2,376.61?

A. That is correct.

Q. To what company were those Supervision and Consultation Fees paid?

A. Electric Bond & Share Company.

Q. Electric Bond & Share Company?

A. Yes.

Q. If I understand you then, the United Gas Public Service Company, in connection with its Laredo business, paid the sum of $2,376.61 to the Electric Bond & Share for those services for the year stated?

A. The figure $2,376.61 apportioned to the City of Laredo is a part of that total payment of $116,578.87.

Q. What services did the Electric Bond & Share Company render to the company for the benefit of Laredo in that respect?

A. I am unable to tell you the particular service for any certain town. It is not carried on the records separately for each town in the amount of service rendered for a particular town.

Q. How is it carried? Explain to us as best you can as Auditor, how it is carried, and for what purposes it is stated it is paid on the books of the company?

[fol. 260] A. It is carried in total as an expense on the ledgers in the Houston office.

Q. For what service?

A. I am unable to tell you definitely the services that are rendered in accordance with the terms of that contract.

Q. By whom are the services rendered?

A. I still am unable to tell you definitely the men who do render those services.

Q. Do you know the salaries paid to those men who are there for the purpose of rendering those services?

A. I do not.

Q. You do not know?

A. No, sir.

Q. Their salaries are not reflected upon the books of the United Gas Public Service Company?

A. They are not.

Q. All you have is the amount of money paid to the Electric Bond & Share Company for those services?

A. That is correct.

Q. That is correct?

A. Yes, sir.

Q. There are officers of the United Gas Public Service Company, are there not, who have that information and figures?

A. I presume so.

Q. Who do you think has it—you are the Auditor of the company?

A. I would imagine that some of the officers do, but [fols. 261-262] which one, I do not know. I don't have that myself, and I don't know just who does.

. . . . . .

[fol. 263] Q. Going back a moment, Mr. Womack, to the industrial consumption of gas in the City of Laredo, along the lines we were asking you about this morning, I believe you testified that you did not know the charge per thousand cubic feet now being made by your company for industrial gas consumption in the City of Laredo?

A. I believe my statement was that there are a number of different rates in effect at this time, so far as industrial business is concerned in the City of Laredo. Now, just offhand, I can not give you those rates. I stated to you this morning that I did not have the average rate. I can compute that, as I told you this morning, for you.

Q. Do you mind doing that?

A. No. Do you want that for the year 1933?

Q. Yes, and 1932 also, if you will.

A. All right; 1932 and 1933.

Q. Yes. Now, the same facilities, as to transmission properties and metering through the city gate, Mr. Womack, that the company uses for serving the domestic consumers, is used for serving industrial consumers; isn't that true?

A. The same city gate meter is used.

Q. And the same transmission lines?

[fol. 264] A. And the same transmission lines, but not all the same services.

Q. What do you mean by the same services?

A. I believe you are the one that used the term services.

Q. I said facilities.

A. Facilities, then.

Q. You use the same transmission lines in taking gas from the fields to the city gate to serve both domestic, industrial and commercial consumers?

A. Yes.

Q. And you have to maintain and do maintain those facilities to serve the domestic consumers, whether you had any large amount or a small amount of industrial consumers?

A. The pipe lines would necessarily have to be maintained.

Q. Well, as I say, you maintain the transmission lines and all the facilities there that are necessary to serve the domestic customers?

A. Yes.

Q. Which is your main business?

A. Yes.

Q. And you have to maintain those as you are now maintaining them without regard to the domestic consumption or sales of gas?

A. I don't know just what you mean by domestic.

Q. Industrial, I mean—I beg your pardon.

A. Well, there are some facilities that are used for industrial only.

Q. I understand that, but your transmission properties?

[fol. 265] A. Yes, that is right.

Q. Your transmission lines are the same?

A. Yes.

Q. And you buy gas in the field there at three and four and five cents——

A. I didn't say anything about any three-cent gas. I gave one of you gentlemen, I believe, some prices that the company pays for the gas it buys, at four cents and some at five.

Q. Well, isn't it true—I will ask you now, isn't it true that your company has recently executed two-year contracts in the Jennings field for purchased gas from independent gas producers at three cents a thousand?

Mr. Coates: Now, just a moment; we object to that because it is not confined to the property nor to the operations which are shown here to be used and useful for service in the City of Laredo. He has said, and the testimony is that within this Laredo area the price paid for purchased gas on these facilities was four and five cents. Now, he is extending beyond those fields, into areas which are not set up here and is asking for prices in those fields.

The Court: I don't think, gentlemen, that we should go into any matters except those which concern Laredo and the Laredo district.

Mr. Bobbitt: It does concern Laredo and the Laredo district.

The Court: If you will so confine your question, I will [fol. 266] permit the witness to answer.

A. The company does not purchase any gas for delivery to Laredo at a price below four cents per M. C. F.

Q. It doesn't?

A. It does not.

Q. It buys gas in the Jennings field and in the Carolina-Texas field, from which fields you do serve Laredo. The company buys gas there at three cents, doesn't it?

Mr. Coates: We make the same objection, because he has already given the answer which relates to Laredo.

Mr. Bobbitt: If the court please, they are buying gas out of the same field there, at three, four and five cents. He says four and five. If I understand from the witness now, he undertakes to say that they are selling us the four cent gas, and I want to know if he doesn't sell us also some of the three cent gas.

The Court: And he says no.

Mr. Bobbitt: That's what I want to find out about.

The Court: He says he does not sell you three cent gas, and he has answered that question this morning, and this afternoon twice. Isn't that correct?

A. That is correct.

The Court: You have answered that twice now?

A. Yes.

Q. Then, no three cent gas purchased in the Carolina-Texas field or the Jennings field or any other field in the [fol. 267] Laredo area goes to the City of Laredo?

A. That is correct.

Q. That three cent gas from those fields goes where?

A. From what fields?

Q. From the Carolina-Tex field and the Jennings field.

A. There is no three cent gas in the Carolina-Texas field at all.

Q. Well, then, from the Jennings field.

A. In the Jennings field, if you limit yourself directly to what I know as the Jennings field, there is no three cent gas in it, either.

Q. Well, the Escobas field is about three or four miles from that Jennings field, isn't it. It is generally known as the Escobas field, where you are buying gas at three cents?

Mr. Coates: Are you testifying now? We object to it.

Mr. Bobbitt: Well, I probably made a statement——

The Court: I think the witness understands the attorney; and the jury understands of course that Mr. Bobbitt is not testifying.

A. I do not believe any gas is being taken at all from the field near Escobas; at least, not what I know as that field. There may be——

Q. Well, we can get that from somebody else, who is familiar with it.

A. Yes.

Q. Anyhow, you are buying gas there at three and four cents, in that field, that you are selling to Laredo?

[fol. 268] A. What was that question. (Question is read.)

Q. I mean at four and five cents?

A. Yes.

Q. And you have the facilities already in use and in operation to serve domestic consumers, the same pipe lines, that transport the industrial gas to Laredo transport the domestic gas also?

The Court: Do you mean residential gas, when you say domestic?

Q. Yes. Yes, the same pipe line facilities transport all the gas, both residential and industrial?

A. Yes, the same pipe line facilities transport all the gas.

Q. What is the capacity of your transmission line from the field to the Laredo city gate?

A. I don't know.

Q. Approximately?

A. I don't know that.

Q. Well, it will transport several times more gas than you are now transporting and selling, wouldn't it?

Mr. Coates: If you know.

A. I don't know that.

Q. What is the size of the pipe line, the transmission line from the Pescadito Junction to the City gate?

Mr. Coates: If you know.

Q. Yes, if you know. Mr. Coates, if you know what is [fol. 269] the size of that transmission pipe——

Mr. Coates: Well, I don't know; there are different sizes in that line; there is one size down to Jennings, and——

Mr. Bobbitt: I am talking about from Pescadito Junction to the City gate.

Mr. Coates: I don't know, but we will have a witness on here who can tell you. And likewise there will be an engineering witness on here who can compute the capacity of those lines for you. This witness has not qualified to testify on that.

A. I don't know the size of that line.

The Court: He says he doesn't know.

Q. All right; you don't know. So far as you know, there has never been any question about that capacity of that line being able to carry all the gas you can sell at the consuming end of it?

A. No, so far as I know, it is able to carry all the gas we sell.

Q. Now, then, having the facilities there and in operation, Mr. Womack, which are required to transport and furnish the gas to the domestic consumers——

The Court: What do you mean by domestic; I want to understand you—do you mean to use that term continuously?

Mr. Bobbitt: I mean to say residential, by that term.

The Court: Let's confine it to residential. I understand the term domestic to mean all the consumers in the city of Laredo.

[fol. 270] Mr. Lange: No, if the Court please, the term domestic means only the residential; and it was used in the record before the Railroad Commission in that manner and has been used interchangeably with the term residential. Those two terms mean the same thing.

Mr. Fitzhugh: The terms residential and domestic as used in the Commission's orders, are synonymous.

The Court: If that is what you are talking about, I will understand it from here on out, but I wanted to know what you meant.

Mr. Lange: That is the meaning of it.

The Court: To me, as a legal term, it is not synonymous, but if you mean it that way, I will take it that way.

Mr. Bobbitt:

Q. Well, as I say, you have the transmission facilities, Mr. Womack, that are necessary to transport and deliver

gas from the field to the city gate for residential consumption. You have those facilities—they are there?

A. Yes.

Q. And the same facilities are used to transport gas for industrial consumption. That is correct, isn't it?

A. The same pipe line facilities, yes.

Q. And the same measuring facilities, at the city gate?

A. The city gate measuring station is the same.

Q. And the gas costs you in the field four and five cents per thousand cubic feet?

A. Yes, that is the price that is paid to the producer [fol. 271] of the gas for it.

Q. Yes, and you could sell gas for industrial purposes in the City of Laredo for, say, ten cents a thousand, and make the difference in profit, in the purchase price of it, or four and five cents, and a small amount fof the transportation expense, could you not?

Mr. Coates: We object to that as speculative and not bearing on any issue in this case—what we could do if we had the industrial consumer there to do it.

The Court: I think it is objectionable, Mr. Bobbitt.

Mr. Bobbitt: It may be, but the thing we have in mind here, they have complained very much about the loss of industrial consumers, and we have not yet been able to show what they charged the industrial consumers of gas.

The Court: The question you just asked can not illustrate what you are now talking about, in my judgment, Mr. Bobbitt, and the objection is to the question you have just asked.

Q. Mr. Womack, from your experience, that you testified about this morning, as a gas executive, from your experience in the sales of gas and your connection with this company, isn't it true that your industrial consumption increases with a decrease in the price for industrial gas?

A. A number of circumstances would enter into that. In the first place, there would have to be the potential industrial business there, and that would have to be there whether [fol. 272] the price was one cent or a dollar.

Mr. Coates: We think the question is not material to what he is seeking to get. We do think he is at perfect liberty to ask how many industrial consumers there are in Laredo that we do not serve.

The Court: He can ask him as an expert.

Q. What was my question now? (Last question and answer is read.)

A. The amount of the industrial customers' business would be a factor in there. Everything being absolutely equal, and if an industrial consumer could increase his business by buying more gas, then if he would get the additional amount of gas at a cheaper rate, he would have more business and would buy more gas.

Q. Let's see if I can't make myself clear on that now. Take, for instance, the Haussmann Packing Company, one of your customers that formerly used a large amount of industrial gas?

A. Yes.

Q. That company quit using industrial gas and went to another kind of fuel. That is true, isn't it?

The Court: I believe he said this morning that he did not know.

Q. He said they quit using it. Now, if you furnished gas to him for fuel out there at ten cents a thousand, instead of twenty cents, for instance, don't you think you would have a market there that you do not now have?

Mr. Coates: We must object to that as entirely too speculative.

[fol. 273] The Court: I don't know; this witness lived down there and he may know just how to answer that. I will let him answer the question.

Mr. Coates: Note our exception.

A. Will you read the question please?

(Whereupon, the last question above was read to the witness: "Now, if you furnished gas to him for fuel out there at ten cents a thousand, instead of twenty, for instance, don't you think you would have a market there that you do not now have?")

A. I don't know.

Q. You don't know. What do you think about it, as an expert in the gas business?

A. I don't know whether the Hausmann Packing Company is operating to full capacity or whether they are operating one day of the week, or what their business is now, if they have any, compared to what it was say two or three or four years ago. I am not familiar with the Hausmann's Packing Company's business.

Q. Let me ask you this question, then, Mr. Womack: Do you think that you will get the number of industrial consumers and the volume of industrial consumption of gas at twenty cents a thousand that you would get at ten cents?

A. No, I do not.

Q. So the increased price of gas is a real factor in the amount of sales?

A. If it gets to the point where, to me, that is an unreasonable increase. That is a hundred percent increase, that you [fol. 274] have mentioned. If you increase your gas rates 100 percent, or decrease them 100 percent, that will be a factor.

Q. Yes, and a material factor?

A. Well, it would be a factor.

Q. A material factor, yes. Now, your concern, inasmuch as it must maintain these facilities that I inquired about, to serve the residential consumers using the same facilities to transport gas for industrial consumers, could make a profit on gas sold to industrial consumers at ten cents a thousand, could they not?

Mr. Coates: Now, that is certainly too speculative, and it is not an accounting question. It is a hypothetical question, sought to be put to this witness without giving him all the factors and the many and various factors which would enter in and properly enter into a question and the answer to a question of that sort.

Mr. Bobbitt: Well, I don't think——

The Court: Wait just a moment • • • Now, as I understand this question—Read it please, Mr. Reporter.

(Question is read to the Court.)

Mr. Coates: Of course that apparently requires him to treat the industrial gas simply as a by-product, without giving the basis on which the expenses would be shared, or anything of that sort.

The Court: Gentlemen, I understand the question. I am going to let the witness answer it, within these limits. That [fol. 275] you take into consideration, as an auditor and an expert accountant of the company, the costs, as you know them, as they affect this situation, and say whether or not they could make a profit through such a sale to the industrial consumers.

A. I don't know.

Q. You don't know? Now, could I ask one or two other questions along that line?

The Court: You may ask them; I may not let him answer them.

Q. You don't know whether they can make money at ten cents or not. And the gas costs four and five cents in the field?

A. Yes.

Q. That is correct; and you are using the same transmission facilities. Now, what additional expenses, other than the purchase price of gas—what additional expense is laid on the company in transporting this gas for industrial sales in the City of Laredo?

A. The expense is not carried by classes of sales.

Q. Tell us how it is carried, and what additional expense would the company be put to, to get that ten cents industrial gas to the city of Laredo.

A. The pipe line facilities, as I have stated, of course carry gas, regardless of the purpose of the sale or the class of the sale that it may be.

Q. Mr. Womack, let me ask this question: I don't want to break in, if you are not through, but you are an expert along [fol. 276] these lines, and isn't it true that about one cent or one cent and a half per thousand cubic feet, in addition to the purchase price of the gas, would cover the transportation expense and deliver it to the city gate for industrial purposes?

Mr. Coates: Now, if the Court please, we object to it again, because it does not state all of the factors. Naturally, if you have a pipe line there, you have certain charges that do not vary with the amount of volume of gas that passes through it, and if you just passed a thousand cubic feet of gas through that a year, your expenses would be relatively the same as if you passed a number of thousand cubic feet through it in the same period. That is, those expenses will remain relatively fixed, regardless of the volume, and he is not giving, in this hypothetical question, all of the factors which would enable this witness to give an intelligent answer, and we object to it for that reason.

The Court: But the court said he would require the witness to take into consideration all of the factors which would enter into the costs, and answer it in the light of that con-

sideration; and the court now instructs the witness to answer the question in that light.

Mr. Bobbitt: As I recall the question, he says that the costs are not carried in classes, but——

The Court: The question was, it would not cost more than one and a half cents per thousand cubic feet, in addition to the purchase price, to get it to the city gate from the field [fols. 277-288] where it is purchased.

Mr. Coates: But there is no volume of gas stated; that is, the number of thousands of cubic feet of gas that passes through there, which would control.

Mr. Bobbitt: That is getting off, I think, into a fine point of theory——

Mr. Coates: No, it is not.

Mr. Bobbitt: There is nothing complicated about this, if we really understand it.

The Court: Gentlemen, we have passed on the question.

Q. Read the question, please.

(The following question was read to the witness: "Isn't it true that about one cent or one cent and a half per thousand cubic feet, in addition to the purchase price of the gas, would cover the transportation expense and deliver it to the city gate for industrial purposes?")

A. The operating expenses and maintenance expenses of the pipe line are not separated as between different classes of sales. I have not attempted to make such a separation, and I therefore could not say what the additional cost of delivering gas for industrial purposes would be.

* * * * * * *

[fol. 289] Questions by Mr. Bobbitt:

Q. Mr. Womack, I believe you testified that you purchased the gas in the field for transportation to Laredo and sale there, at four and five cents per thousand cubic feet?

A. Yes, sir.

Q. You transport that gas through the same lines and [fol. 290] through the same facilities that are used for transporting gas to residential consumers?

A. From the fields to the Laredo city gate.

Q. To the Laredo city gate?

A. Yes, sir.

Q. Are you acquainted with the properties there of the Central Power & Light Company, in the city of Laredo?

A. I have never seen the industrial installation or what you might term a meter for delivering gas to the Central Power & Light Company.

Q. You are familiar with their properties there, aren't you?

A. I know that they have an old building there.

Q. You are now serving gas to a limited extent to the Central Power & Light plant—I believe you testified to that.

A. Yes, we are——

Q. You are now serving——

A. I don't know whether it is to their plant or to their office, or where it is.

Q. You are now hooked up and are now serving gas to the Central Power & Light Company?

A. We do sell them some gas.

Q. Yes, sir. That is what is termed industrial gas——

A. Yes.

Q. —that is, gas for industrial purposes?

A. Yes.

Q. Now, I want to ask you, Mr. Womack, what additional [fol. 291] cost to the purchase price of gas is incurred in the furnishing of gas through those transmission lines to the Central Power & Light Company, other than the purchase price of gas?

Mr. Coates: To which the defendant here objects because no proper predicate is laid for this question by a showing, or evidence even remotely tending to show that the Central Power & Light Company would resume the operation of that plant, and for the further reason that it is too remote, too speculative, and is a hypothetical question put without having the proper predicate laid by testimony already in the record.

The Court: The objection is overruled.

Mr. Coates: Note our exception; and may we have the same bill to all this further testimony?

Mr. Bobbitt: Yes, sir.

The Court: Any further questions touching the same items.

Mr. Bobbitt: Yes, sir. Read the question, please.

(The Reporter thereupon read the last preceding question as follows: "Now, I want to ask you, Mr. Womack, what

additional cost to the purchase price of gas is incurred in the furnishing of gas through those transmission lines to the Central Power & Light Company, other than the purchase price of gas?")

Mr. Coates: I object for the further reason that no volume is stated in the question, and that is an essential element to [fol. 292] this hypothetical question.

The Court: All right; go ahead.

A. I don't have the expense accounts in the operation nor in the maintenance divided as among the general classes of sales; I don't know what volume the lighting and power plant would use; I don't know the length of that line,—and for those reasons I am unable to tell you what it would cost.

The Court: All right, gentlemen, the witness has answered the question now.

Q. You know the volume that they used heretofore, do you not, in other years? I believe you testified to those amounts, the volumes that they used in other years, and that they have decreased down to practically nothing.

A. I testified as to the revenues derived from sales of gas to that customer, and not to the volume.

Q. Well, you—it is a simple matter of calculation from the amount to the volume, isn't it?

A. I can get the volume of M. C. F. for you. I don't have it here; I have it at the hotel.

Q. Can't you give us approximately, Mr. Womack, what additional cost would be incurred to the company for delivering that industrial gas, in addition to the purchase price of it?

Mr. Coates: That is objected to for the same reason, and for the further reason that it calls for a simple speculation from an accountant here.

[fols. 293-349] The Court: You asked him to approximate it?

Mr. Bobbitt: Yes, sir, give it approximately. He is an expert—an expert accountant. I admit he is an expert accountant, and a good witness.

The Court: This question doesn't deal with volumes of gas, but deals with costs. If you can answer it, Mr. Witness, I will let you answer.

A. I don't have the maintenance and operating costs divided as among all different classes of business that the

company has—that is, as between residential, commercial and industrial, or the other classes that it has. Without that division I would certainly be unable to answer your question. I wouldn't want to even approximate it because it might just be a wild guess.

* * * * * * *

[fol. 350] Testimony of W. W. Stein

Q. Yes, sir. Now, you were interrogated yesterday, Mr. Stein, about a contract that is now in evidence, entitled "Agreement Between Southern Gas Company and South Texas Gas Company". You testified at some length yesterday on direct examination about the making of this contract, dated December 1, 1929.

Mr. Coates: It is November, isn't it, Bob?

Mr. Bobbitt: Yes, November 1st, I see there has been a change there,—1929.

Q. (Reading.) "by and between Southern Gas Company, a Delaware corporation, * * * and South Texas Gas Company, a Delaware corporation",—and the contract shows that you were then Vice-President of the South Texas Gas Company.

A. That is correct.

Q. That is correct, isn't it?

A. Yes, sir.

Q. And you continued in that capacity until it was—Do you continue in that capacity at the present time?

A. No.

Q. Has that company been dissolved?

A. It has,——

Q. It has?

A. —I think.

Q. And the Southern Gas Company, of which Mr. L. A. Nordan was Vice-President?

A. Yes.

[fol. 351] Q. Both of those companies were owned by the Moody-Seagraves interests, were they not—the stock in those companies?

A. At one time they were; later they were owned by other interests.

Q. Well, they were so owned on the first of November, 1929, when you made this contract?

A. Yes, sir.

Q. Moody-Seagraves owned both companies?

A. Yes, sir.

Mr. Coates: Mr. Bobbitt, will you come up here just a minute

(Counsel confer with Court in undertones, off the record.)

The Court: All right.

Q. Mr. Stein, at the date of the execution of this contract I am inquiring about, between Southern Gas Company and South Texas Gas Company, the Moody-Seagraves interests owned the stock in both companies—the controlling stock in both companies, if you remember?

A. It was known at that time as being under the management of the Moody-Seagraves interest.

Q. Well, they controlled the stock—they owned and controlled and voted the stock of the corporations, didn't they?

A. I don't know that.

Q. You don't know that, and you were Vice-President of the company?

[fol. 352] A. I didn't attend the stockholders' meetings.

Q. You didn't attend the stockholders' meetings?

A. No, sir, I had other matters to attend to.

Q. To the best of your knowledge, that is true, isn't it, Mr. Stein?

A. I don't know.

Q. Well, Mr. Stein, who was President of your—of the concern of which you were Vice-President, South Texas Gas Company—who was President of that company at that time.

A. Mr. O. R. Seagraves.

Q. Mr. O. R. Seagraves. He is the head of the Moody-Seagraves concern?

A. Yes, sir.

Q. Who was President, Mr. Stein, of the Southern Gas Company at that time?

A. I don't know.

Q. You don't know. Isn't it true that Mr. O. R. Seagraves was president of that company?

A. I am not sure. I was connected with the South Texas Gas, and not with the Southern.

Q. Well, you don't know about that. I just want to know what you know about.

A. I don't know.

Q. You don't know who the president of the Southern Gas Company was?

Mr. Coates: Mr. Bobbitt, if this will meet with the infor-
[fol. 353] mation that you are trying to get, we are willing to stipulate with you that at the time this contract was entered into the Moody-Seagraves interests owned the control—that is, more than fifty per cent, but not all, of the stock of both Southern Gas Company and South Texas Gas Company.

Mr. Bobbitt: And that Mr. Seagraves was President of both companies?

Mr. Coates: Off the record.

(Discussion off the record between counsel and Court is here omitted.)

Q. In making this contract, Mr. Stein, as Vice-President of the South Texas Gas Company, you testified yesterday that you made the very best trade you could for your company, in acquiring gas in the Carolina-Texas field under this contract with the Southern Gas Company, of which Mr. Nordan was Vice-President—that is correct, isn't it—in 1929, when this contract was made?

A. I made a very good contract, I think.

Q. You made a good contract then, I believe you testified yesterday?

A. Yes.

Q. And it is a good contract now, you have stated?

A. It is a good contract.

Q. And would you make—, I am just asking you now in connection with your testimony yesterday—would you make the same contract now that you made then?

[fol. 354] A. If the circumstances were the same, I certainly would.

Q. Yes, sir. And you—I believe you testified you dealt at some length with Mr. Nordan in making this trade, under which you contracted to pay—your company or the one you were acting for—the South Texas Gas Company—agreed to pay to the Southern Gas Company six cents per thousand for gas in the Carolina-Texas field?

A. That included the well mouth price and the gathering charges.

Q. Well, whatever it included, you made that contract?

A. —at our lines. Yes.

Q. Yes. I don't believe you testified yesterday that you inquired of Mr. Nordan, for his company, the price that he would take for the gathering system. Did you go into that?

A. When I found out—I asked him if it could be sold, we could buy it, and when he said it would not be sold that ended the prospects of buying it; so we didn't discuss price.

Q. And he said that it couldn't be sold?

A. He said that it couldn't readily be sold under the mortgage that existed on that property. That was the understanding I had from him.

Q. You didn't ask him the price, of course, since——

A. Why, no.

Q. If it could be sold, you didn't ask him the price—you didn't go into that detail?

A. If it couldn't be sold, why, I didn't see any necessity [fol. 355] of talking about price.

Q. Yes. Did you—do you remember whether—did you ask Mr. Seagraves anything about the situation, the President of the company?

A. I did not; I did not discuss the matter with him at all.

Q. Did you have any other directors of the concern—who were the directors of the South Texas Gas Company?

A. There were a number; I don't remember just who they were.

Q. Do you remember any of them?

A. Mr. Seagraves and Mr. Moody are the only ones that I remember.

Q. You didn't advise with any of the directors?

A. I did not.

Q. Or the President?

A. I did not.

Q. Yes, sir. As a matter of fact, Mr. Stein, that contract was made between two concerns which were owned by the same parties—isn't that true?

A. Generally speaking, yes, but——

The Court: Wasn't that fully covered by your stipulation a while ago?

Mr. Bobbitt: Yes, sir.

Mr. Coates: I think so.

Q. And do you remember, in the writing of the contract, whether the same attorneys represented both parties in [fol. 356] the drawing of the contract?

A. They had the same common attorneys.

Q. Both companies had the same attorneys?

A. Yes.

Q. And according to your best information the attorneys represented both parties in the drawing of this contract?

A. Yes.

Q. Now, Mr. Stein, do you recall a contract made on April 10, 1928, between the South Texas Gas Company, in which it agreed to purchase from South Texas Production Company certain gas in the Carolina-Tex field?

A. There was a contract.

Q. Have you a copy of that contract?

A. I have not.

Q. Could you secure it for us, Mr. Stein?

A. I will try to. I don't know whether I can or not.

Mr. Coates: I don't know what contract you are talking about; but is it material here?

The Court: I don't know. He has given you the date, and so forth. I don't know whether it is material or not.

Mr. Bobbitt: Yes, sir, we think it is very material, and we would like to see the contract, if the Court please. They offered one along this line, and we would like to——

Mr. Coates: Mr. Bobbitt, will you come here, please.

[fol. 357] (Attorneys confer with Court in undertones, off the record.)

Q. The contract dated April 10, 1928, between South Texas Gas Company and the South Texas Production Company, providing for the purchase of gas at eight cents per thousand cubic feet.

Mr. Coates: We believe that the contract is the best evidence of its contents and what it stipulates.

Mr. Bobbitt: That is correct. I was just trying to identify it, so it would enable him to find which contract I had in mind.

Mr. Coates: It is sufficiently identified. We will get it.

The Court: Well, he understands what you are talking about.

Mr. Bobbitt: Yes, sir.

Q. And also, Mr. Stein, this original contract as amended —it was amended on November 30, 1929, and to enable you to find that amendment—I know you have a mass of contracts and records, many contracts specifying—beginning December 1, 1929, the purchaser shall pay to the seller for all natural gas delivered under said agreement of April 14, 1928, at a certain rate per thousand cubic feet. I don't care now—that is the amendment.

A. Of April 14th?

Q. Yes. We want that original contract and the amend-
[fol. 358] ment, if you please.

A. All right.

Q. Now, Mr. Stein, taking up these matters you were interrogated about in reverse order, I didn't understand clearly, and I am not sure the court and jury did, your explanation of what you consider an unprofitable customer.

A. What didn't you understand about it?

Q. I didn't understand anything about it; will you just tell us, in language that we laymen may understand, what you mean by unprofitable customers, in the taking of residential gas in the City of Laredo?

A. An unprofitable customer, in my judgment, is a customer who does not pay in enough money to the company to take care of his proportionate share of the cost of serving him.

Q. You are speaking, of course, of residential customers?

A. Any customer that would pay in sufficient.

Q. Well now, you have a minimum service charge to all residential customers, haven't you, Mr. Stein?

A. Yes.

Q. And before any resident, citizen or anybody can secure gas for use in their residence, they must pay a minimum amount to the company to start the service?

A. Yes.

Q. And in addition to that, they must put up a deposit in cash money, of $5.00, isn't it, for residential customers?

A. The deposit in most cases is $5.00 for a residential customer.

Q. And it is never under that, is it?

A. Sometimes there is no deposit required.

[fol. 359] Q. That is very seldom, isn't it?

A. It has happened.

Q. The general policy is to charge the residential customers a minimum deposit of $5.00, isn't it?

A. Where we don't have sufficient credit experience or records, or on our records enough data to warrant giving him the deposit, then we——

Q. I didn't ask you about that.

Mr. Coates: I think that is in answer to his question; his question was whether he did not require a deposit of all the customers——

The Court: And he said they did not.

Mr. Coates: He is now explaining that they do not require them where they have a good credit rating.

Q. Now, Mr. Stein, how many customers do you have that you are serving natural gas to, that you have not required a cash deposit of, in connection with the service?

A. I don't know.

Mr. Coates: Can you give it approximately?

A. I could not give it approximately, no; it would be a guess.

Q. Isn't it true that it is but a very few?

A. No, there is quite a number, and I would like to get that information for you.

Q. That is what I am asking for and I wish you would.

A. But I do not know now, because I did not know that information would be required.

[fol. 360] Q. On the others—on the commercial and the industrials, it goes up considerably, doesn't it?

A. The commercial and industrial consumers, where the credit is not established, we try to secure a deposit to cover an estimated 60 days gas bill.

Q. Sometimes that is $25.00 and sometimes it's $50.00 and sometimes it is $100.00 deposit, depending on the amount of gas that probably will be used for sixty days?

A. Whatever will be the requirement in each particular case.

Q. And a minimum charge for gas in each instance?

A. We have some customers who have no minimum charge.

Q. You don't know how many?

A. Not in the city of Laredo.

Q. And you can not even approximate that?

A. They are outside the city of Laredo.

Q. What do you mean—all of them in the City of Laredo do have a minimum charge?

A. I believe so.

Q. Well, don't you know that, Mr. Stein?

A. I don't know that for certain because I would have to check and see definitely. They should have a minimum charge.

Q. Now, Mr. Stein, in connection with your conference with Mr. Neiswanger of the Central Power & Light Company that Mr. Coates asked you about, in 1929, you learned of their plans, I believe you stated, to install a high power line into the City of Laredo?

[fol. 361] A. That line was a part of the plans at that time.

Q. What I am getting at, you conferred with him, according to your testimony there, to try and get him to continue using gas?

A. I did.

Q. What was he then paying for gas for that plant?

A. The rate for the boilers was 20 cents net per thousand cubic feet for the first ten million cubic feet used per month.

Q. Twenty cents a thousand cubic feet; is that right?

A. Yes, for the first ten million cubic feet used per month.

Q. All right.

A. And 18 cents net per thousand cubic feet for all gas consumed in the boilers, over the first ten million cubic feet of gas used per month.

Q. All right; anything else?

A. What do you mean?

Q. Well, that was in 1929?

A. Yes.

Q. That is the price established in 1929?

A. Yes.

Q. Prior to that time, it was 16 cents, wasn't it?

A. It was 20 cents a thousand for the first ten million cubic feet, and 16 cents per thousand cubic feet for all gas over the first ten million cubic feet used per month.

Q. When did that price go into effect?

A. Which price?

Q. The one you just named?

[fol. 362] A. I don't remember the date.

Q. Do you know how long it continued in effect?

A. No, I don't, offhand.

Q. You raised the price, in 1929, didn't you, after these properties were acquired by these other corporations that

you testified about? You raised the price of gas to the Central Power & Light Company, at Laredo?

A. Yes, nearly sixteen months after.

Q. What was the price prior to that time that you charged the Central Power & Light Company?

A. Prior to what time, please?

Q. Prior to the time you established the 20 cents price and the 16 cents price?

A. I would have to look back to the records for that.

Q. Don't you remember approximately what it was?

A. I am not sure.

Q. Well, you have had a good deal of • • • there was quite a controversy there; you were losing a big customer for your gas company, weren't you?

A. We were losing a big customer?

Q. Yes, weren't you losing a big customer, if the Central Power & Light Company cut off its business?

A. The rate had nothing to do with it.

Q. I didn't ask you about the rate; I asked you if you were not about to lose a big customer.

A. The prospects were that we would eventually lose them.

[fol. 363] Q. That you would lose them; and it was your business to sell gas?

—. —.

A. To sell all the gas you could, as you testified in answer to Mr. Coates questions?

A. It was.

Q. And you were very much concerned about not losing the business of the Central Power & Light Company, were you not?

A. About not losing their business; yes, that is correct.

Q. And the price was twenty cents, and sixteen cents, that you testified about.

A. Prior to January 1, 1929.

Q. And what was it after that?

A. Twenty cents per thousand cubic feet for the first ten million cubic feet used per month, and eighteen cents per thousand cubic feet for all over the first ten million cubic feet used per month.

Q. Did you consider reducing the price below that twenty cents and sixteen cents, in an effort to hold that business?

A. We did.

Q. And did you reduce it?

A. We could not hold the business.

Q. I asked you did you reduce the price.

A. We did not.

Q. Now, Mr. Stein, let me ask you this question: You are familiar with this map are you not?

A. I have seen it.

[fol. 364] Q. This point "2" on here is identified by Mr. Coates as the City of Laredo?

A. Yes.

Q. And this is the station of Bruni, Hebbronville, out in the gas field, right here?

A. Yes.

Q. And this is Jennings field, at point 1?

A. Yes.

Q. And here is the old Reiser field here, isn't it?

A. That is west of Aguilares.

Q. And here is the Cole field, west of Bruni?

A. Yes.

Q. And the Southern Gas Company's lines, in which your company is interested, transports gas from the Cole field here at this point, into San Antonio, does it not?

A. Yes.

Q. And sells gas at San Antonio for industrial purposes, does it not?

A. I don't know who they sell gas; it is probably Public Service Company, I believe.

Q. To the Public Service Company?

A. Yes.

Q. And they likewise transport gas on into New Braunfels, San Marcos and into Austin?

A. Yes.

Q. From this field here?

[fol. 365] A. I don't know where they take it from.

Q. Don't you — that about the concern of which you are the district manager?

A. I am not district manager of that concern for that district.

Q. You are not familiar with the takings of gas by the Southern Gas Company?

A. I am not.

Q. Do you know, Mr. Stein, the price that the Southern Gas Company charges for gas for industrial purposes at San Antonio, 150 miles away?

Mr. Coates: Wait a minute, Mr. Stein. The question is objected to because no proper predicate has been laid for it; because the question does not take into account all of the factors which would determine a fair and reasonable price of gas, and because no proper predicate is laid for the question by showing that the circumstances are substantially like and comparable as to volumes taken and commitments for future volumes taken, the term of the contract and all the other variable circumstances entering into and properly entering into a price of that sort, and the question is objectionable and we object to it for the additional reason that the proper predicate is not laid by showing substantially like and comparable circumstances.

The Court: Read the question, Mr. Reporter.

(Whereupon the question was read to the court: Do you know, Mr. Stein, the price that the Southern Gas Com-
[fol. 366] pany charges for gas for industrial purposes at San Antonio, 150 miles away?)

The Court: Overrule the objection.

Mr. Coates: Note our exception. May we have the same objection to all this line of testimony?

The Court: Yes.

Q. Do you know, Mr. Stein—or I will ask you this question.

The Court: Wait and let him answer that one.

Q. I beg your pardon.

A. I don't know.

Q. You don't know. Now, do you know, Mr. Stein, what your concern charges for gas transported from the Cole field and the Jennings field, through the transmission lines to the City of Houston, 320 miles away?

A. I don't know.

Mr. Coates: The same objection, because it is not shown what circumstances——

The Court: The same action of the court.

Mr. Coates: Note our exception.

Q. You don't know?

A. No.

Q. Do you know the price charged by this concern for industrial gas transported to New Braunfels, and sold to

the power company at New Braunfels for industrial purposes?

A. I do not.

Q. Or to Austin?

A. No.

[fol. 367] Q. You don't know?

A. No.

Q. Do you know the price, Mr. Stein, that your company sells or delivers gas for industrial purposes to the Roma city gate?

Mr. Coates: It is understood our objection goes to all this line of testimony?

The Court: Yes.

Q. —45 miles south of the Jennings field?

A. I don't know what the price is now.

Q. But you are selling a large volume of gas from the Jennings and the Carolina-Texas and the Cole field, transporting that gas to Roma city gate for delivery to Monterrey, Mexico, are you not?

A. I am not operating in that section there.

Q. You do know they are transporting large quantities of gas down there, don't you?

A. By hearsay, I know that they have been taking large quantities of gas to Mexico.

Q. Just by hearsay is all?

A. Well, I don't know myself; I have not checked it.

Q. As district manager, you are not familiar with the operations of this company, and the takings of gas in this district of which you are the manager?

A. I am not manager of that section.

Q. This point, I will mark it X here, shown on the map as Monterrey, in the republic of Mexico; and gas is trans-[fol. 368] ported from these same fields through the Roma gate and into Monterrey, Mexico; you know they deliver gas through that gate and from these fields?

A. From which fields.

Q. The Jennings field; from the east and west Jennings field, and the Carolina-Texas field, the Cole field, or any other field that your company takes gas from.

A. They are not taking any from the Carolina-Texas.

Q. Where are they taking it from?

A. I don't know.

Q. Then how do you know they are not taking it from the Carolina-Texas field?

A. I know that; because I just know that part of it.

Q. Do you know they are not taking it out of the Jennings field?

A. What was that question, please?

Q. Don't you know, as a matter of fact, Mr. Stein, that they are taking gas every day out of the Jennings field, through the Roma city gate, and into Monterrey, Mexico?

A. I believe so.

Q. You know that, don't you?

A. I believe they are; they must be getting it from some section down in there.

Q. But you don't know the price they are charging for it?

A. I don't know now.

Q. You don't know now?

A. No.

[fol. 369] Q. Did you ever know?

A. I did at one time.

Q. What was it at that time?

Mr. Coates: We object further, because he is getting into some past period, and that makes the comparison of prices at some past period with prices at the present date, even more dissimilar, and we repeat all of the objections we have heretofore made to this line of questioning.

The Court: Fix the time, Mr. Bobbitt.

Q. What time in the past did you know about that price; what was that time, when you did know about it?

A. In the beginning of 1930.

Q. In the beginning of 1930? Was it in January, or February, or March?

A. It was during 1930, I would say.

Q. During 1930. Now, what price was paid?

Mr. Coates: The same objection.

The Court: Overrule the objection.

Mr. Coates: Note our exception.

Q. What price was paid?

A. My recollection is that it was 12 cents per thousand cubic feet at that time.

Q. Twelve cents per thousand cubic feet, for gas that went out of the Jennings field and was delivered through

the Roma gate to Monterrey, Mexico. Do you know how long that price was continued?

A. No.

[fol. 370] Q. Don't you know that soon after that price you testified about was in effect; that soon after that time you were talking about, that price was reduced?

A. I don't know about that.

Q. You don't know about that. I believe you testified yesterday that there was no three cent gas purchased by your company that comes to Laredo?

Mr. Coates: He didn't testify to that.

Q. It was the other witness, then. Let me ask you this question, Mr. Stein; you testified yesterday that when you made this six cents contract between the Southern Gas Company and the South Texas Gas Company, of which you were vice president, you were seeking a gas supply?

A. Yes.

Q. In other words, when you made that contract to pay six cents for it in the Carolina-Texas field you were seeking a supply of gas?

A. Yes.

Q. You wanted to assure yourself of a supply, and——

Mr. Coates: Mr. Bobbitt, the record will reflect that the witness said that the six cents covered the well mouth price of the gas and the gathering of the gas and the delivery of the gas to the lines of——

Mr. Bobbitt: I think the record will speak for itself on that.

Mr. Coates: I know it will, but you are seeking to put into [fol. 371] the mouth of this witness a statement that he said that a contract of six cents at the well mouth was a good contract and I am pointing out that is not what the witness said.

Q. The witness testified he made that contract at that time and that it was a good contract, and that he would make it now.

Mr. Coates: That is right.

Mr. Bobbitt: And that was six cents.

Mr. Coates: For the well mouth and gathering——

Mr. Bobbitt: All right; whatever it may be, Mr. Coates.

Q. Now, isn't it true, Mr. Stein, that you have recently, within the last three or six months, made contracts with independent gas producers in the Jennings area, and where

you have tied them up with two year contracts, to take their gas at three cents a thousand?

A. I have not made any such contract.

Q. Do you know anything about those contracts?

A. I have never seen them.

Q. Who makes the contracts for acquiring gas for use in your district, Mr. Stein?

A. I don't know who made those contracts.

Q. Well, you made one here that you testified about?

A. That was in 1929.

Q. Yes; have you made any others?

A. I have not made any in that field since I have been back in Laredo this time.

Q. You have made no purchase contracts for gas since you [fol. 372] came back to Laredo in June of 1932?

A. I have not.

Q. Who makes those purchase contracts for your concern?

A. I don't know. It is handled by a representative of the land and lease department, I think.

Q. Don't you have any idea who it is?

A. I don't know who made the contracts you are speaking about.

Q. Who generally makes them, Mr. Stein? You are the district manager of this concern, and have been connected with it ever since it was organized.

A. It may have been one of several people; I don't know who it was in this case.

Q. Don't they confer with you, as the district manager, when they make these contracts for acquiring this gas? Down there in this district?

A. They did not.

Q. They didn't confer with you?

A. No.

Q. But you do know, as district manager and as an employee of the company, that they are acquiring gas at three cents a thousand in the Jennings field?

A. My knowledge would be from hearsay only.

Mr. Coates: Is it understood that our exception goes to all this line of testimony?

The Court: Yes, if you want it to.

Q. Now, you testified, Mr. Stein, at some length, to the [fol. 373] construction of this electric plant at Laredo, that

is now obsolete; you testified, I believe, it had just built itself up from time to time, and that they would acquire a piece of property this year and a piece of property the next year, and that it's kind of a patch-work?

A. You might call it that.

Q. And for that reason, it has been shut down, and they do not operate it and couldn't operate it?

Mr. Coates: Excuse me a minute, Mr. Bobbitt; are you about to leave this other line of questioning?

Mr. Bobbitt: Which line of questioning?

Mr. Coates: That you have been talking about, seeking to compare the prices of gas at the city of Roma, the city gate, and other prices?

Mr. Bobbitt: We are not about to leave anything, yet. We may ask a lot of questions.

Mr. Coates: Well, at this time, in order to perfect our record and keep it straight in here, we move the Court to strike the testimony and all the testimony, seeking to elicit from this witness comparative prices of gas at the various points shown in the record, for each and all the reasons stated in our objections to those questions.

The Court: Overruled.

Mr. Coates: Note our exception.

The Court: There is no evidence showing what the prices were, and he said he didn't know, all the way along; there [fol. 374] is no testimony to strike.

Q. Now, if I understood your testimony, they were not operating that electric plant at Laredo, because it could not profitably be used to generate power, except for emergency purposes?

A. That is correct, I understand.

Q. That is correct. Now, Mr. Stein, in the construction of this gas concern at Laredo, you have been connected with the company since prior to its organization, haven't you?

The Court: I think that is a question that has been asked and answered several times already.

Q. You built the line, the transmission system, as I understand it, first from the old Reiser field, designated on the map here, as 22 miles to the City of Laredo?

A. The first construction was the line from the Reiser field to the City of Laredo.

Q. And the distribution system within the city?

A. And the distribution system within the city of Laredo, yes.

Q. And the wells in that Reiser field, according to your testimony, got low, and then you struck out for other gas?

A. I have not testified to that in this case.

Q. Well, I beg your pardon. Where was the next piece of construction of transmission line that your company engaged in, after the supply in the Reiser field was being reduced?

A. The line was built to north Laredo, and to South Laredo——

Q. That is for distribution purposes?

A. Yes.

[fol. 375] Q. You built a line up for the irrigation plants, north of here?

A. Yes.

Q. And you built a line down south of here, for the irrigation farms?

A. Yes.

Q. And the industries around?

A. Yes.

Q. That is the next construction?

A. Yes.

Q. The gas got low in the Reiser field, and then what did you do?

A. The line was extended from what is known as Pescadito Junction, and that is point "4", I believe, on the map here——

Q. Yes, that's right.

A. —to what is shown as the Jennings field.

Q. That is down southeast, how many miles—about 26 miles?

A. About 27 miles.

Q. When was that line completed, if you remember?

A. In 1916.

Q. In 1916; and you took gas from the Jennings field, then, from 1916 until what date?

A. Until some time in 1922.

Recess at 10:20 A. M.

* * * * * * *

[fol. 376] (10:25 A.—., After a Recess)

Q. Mr. Stein, you are now looking at a map which bears date December 31, 1931. Is this the same map, Mr. Stein,

that was used in the testimony before the Railroad Commission in connection with the hearing in this case?

A. It looks like the same.

Q. Well, it is the same map, is it not?

A. I think so.

Q. And that map purports—its legend here states, "South Texas Gas Company, Southern Gas Company" certain lines, and another line it says "owned by Southern Gas Company, leased to South Texas Gas Company; another figure on here, "main line check meter stations"; another figure on here, "Town Border meter stations". Do you recognize that map, Mr. Stein, as reflecting the location of the transmission lines and gathering systems in the Jennings-Carolina-Tex. field?

A. As they were at that time.

Q. December 31, 1931. And, in so far as they show, that is the situation at the present time, isn't it?

Mr. Coates: He didn't answer the question, Mr. Bobbitt. As a matter of fact, there have been changes in the gathering line; there are changes from year to year.

Q. I understand that. There have been additions—that is, gathering lines going out and other wells brought in since this map was made; isn't that true?

[fol. 377] A. Yes, sir.

Mr. Coates: Likewise they are connected with wells that are now dead.

Q. The point I have marked One here with a circle is the city of Laredo, and point 2 here that I have marked on the map with a circle is what is known as Pescadito Junction?—that is correct, isn't it?

A. Yes.

Q. Point 3 that I have marked here in the circle down here is what is called Jennings Junction?

A. Yes, sir.

Q. That is located in the old Jennings Field; that is correct, isn't it?

A. Yes, sir.

Q. The line running south down here to No. 4 is the transmission line going to Roma and Monterrey, Mexico?

A. Yes, sir.

Q. Point 5 in this circle on the map which I am making,

that is the meter—what do you call that?—check meter in the Carolina-Tex. field?

A. Meter station.

Q. Meter station in the Carolina-Tex. field, Point 5. And these green figures here near Point 5, that is the Carolina-Tex. gathering system properties?

A. Yes.

Q. That is referred to in the contract that you testified about yesterday afternoon and this morning?

[fol. 378] A. Yes, sir.

Q. And Point 6 over here on the map in this circle, what does that represent?

A. The junction point between the line running from Carolina-Tex. and the line to San Antonio.

Q. Called the Carolina-Tex. Junction?

A. Yes.

Q. That is where your transmission lines from the Carolina-Tex. field join the transmission lines coming from the Jennings Field and go north to San Antonio; that is correct, isn't it?

A. Yes.

Q. And the point which I am marking here on the map in this circle, what does that represent?

A. Jim Hogg Junction.

Q. Jim Hogg Junction. That is in what is called the Jim Hogg gas field?

A. Yes, sir.

Q. And the line running south from Jim Hogg Junction, what does that represent?

A. Running southeast?

Q. Yes.

A. That is a line to the Rio Grande Valley.

Q. Transmission line for gas from this area to the Rio Grande Valley?

A. Yes.

Q. Your concern does not own that transmission line, as I understand it?

[fol. 379] A. I don't think it does.

Q. You sell gas to them?

A. Yes.

Q. Do you know the price you charge for gas here for delivery to the Rio Grande Valley?

A. I don't know.

Mr. Coates: We make the same objection.

Q. Speak out, Mr. Stein, so the last juror can hear you?

A. I don't know.

Q. And the line running over east from Pescadito Junction to Aguilares, which is Point 8, that is your company's transmission line from Pescadito Junction to Aguilares?

A. Yes.

Q. And from there on up to the Carolina-Tex. field, that is your transmission line?

A. Yes, sir.

Q. And this other line here from Point 8, at about the point on the map called Mirando City and Oilton, that is your line running to and serving those little communities?

A. It does now.

Q. Including here the Misko refineries, designated on the map as Misko refineries?

A. I don't know whether they are serving the Misko refineries.

Q. Well, it is shown on the map?

A. Yes.

Q. Now, your first construction, Mr. Stein, I understand you started construction of the distribution system and this [fol. 380] transmission line from Laredo and Reiser here toward Pescadito Junction in April, 1910, according to your history of this concern, I believe?

A. I don't know just the date that it was started.

Q. Let me refresh your memory on that. (Paper handed to witness.)

A. It was in 1910 that the line was built.

Q. Well, wasn't it April, 1910, when you started construction of the distribution system and this transmission line from Laredo to the Reiser field?

A. I don't know whether it was in April or not.

Q. Well, see from the memorandum prepared by you if that is not true.

A. In about April, 1910.

Q. Construction was started?

A. The Border Gas Company was organized.

Q. Yes.

A. But the construction of the line began some time after that.

Q. How long after that?

A. I don't know, because I was not there the day it began.

Q. Some time after April, 1910?

A. Yes, sir.

Q. And I believe it states there on December 23rd, 1910?
A. Yes.
Q. That is when the first gas fire was lighted in a home in Laredo?
A. Yes.
[fol. 381] Q. That is correct?
A. Yes, sir.
Q. That was after the completion of your transmission system?
A. Yes.
Q. And your distribution system in the city of Laredo?
A. Yes.
Q. This line here, Mr. Stein, north of the red transmission line—the black I am marking "X" and "Y" for identification here; what does that represent?
A. The Texas-Mexican Railroad.
Q. The Texas-Mexican Railway practically parallels the transmission line of the old Border Gas Company?
A. It runs in the same direction.
Q. It crosses it a time or two?
A. No, not until it gets past Reiser.
Q. Well, it does cross it there?
A. Or this side of Reiser—near Reiser.
Q. Now, the mileage, Mr. Stein, of this transmission line from Pescadito Junction to the city of Laredo, the map here shows 4.96 miles of twelve inch transmission pipe line; is that correct?
A. Yes, according to the map there.
Q. Well, is that correct?
A. I think so.
Q. And then how many miles of ten-inch lines included in that?
A. May I ask a question? You are asking these questions as of December 31, 1931, only, not as they are today?
Q. Well, I am not so particular about that. Have there [fol. 382] been any changes?
A. I am not sure; I believe there have been some changes since that time; I am not sure of that, because I didn't operate that line at that time.
Q. You are operating it now?
A. No—no.
Q. You are not operating this line now?
A. No, sir.

Q. Who is operating it now?

A. It is operated under the direction of the District Manager of the San Antonio pipe line district.

Mr. Coates: He has testified, Mr. Bobbitt, that he is Manager of Distribution for that area.

Q. Well, you helped construct this line, didn't you?—you have been connected with the company since before it was organized and connected with it yet?

A. I am connected with the United Gas Public Service Company at this time and was connected with the Border Gas Company back in 1910, and its successor companies, up until January, 1931.

Q. Well, let's go back. How many miles of ten-inch pipe are shown in this transmission line from Laredo to Pescadito Junction?—just read it.

A. The map shows 3.835.

Q. Isn't that nearly four miles, in plain language?

Mr. Coates: Mr. Bobbitt, we will stipulate that the distances shown on the map you have there are correct as of December 31, 1931.

[fol. 383] Q. How many miles of eight-inch pipe?

A. I can't see that.

The Court: Well, Mr. Bobbitt, that is stipulated. Why don't you read it yourself?

Mr. Bobbitt: I don't know whether I can read it. The map shows eighty hundredths of a mile of eight-inch line; fifty-one hundredths miles of eight-inch line at another place. It shows forty-seven hundredths miles of ten-inch line at another place. It shows one and seventy-one hundredths miles of ten-inch line at another place.

The Witness: One and seventy hundredths.

Mr. Bobbitt: Yes, one and seventy hundredths. It shows one and eighty-two hundredths miles of eight-inch line at another place.

Q. That is all in the transmission line between Laredo and Pescadito Junction; that is correct?

A. Yes, sir.

Mr. Coates: Now, Mr. Bobbitt, we will likewise stipulate that the sizes of lines and the distances shown on the map with respect to other lines are correct as of the date that map was made.

Q. Do you know what changes, if any, have been made in these lines since December 31, 1931?

A. I don't know.

Q. You don't know?

A. No.

Q. Who would know, connected with the company?

[fol. 384] A. The District Manager of the pipe line department or some representative of the pipe line department.

Q. Well, who is District Manager of the pipe line department?

A. Mr. T. F. Humes of San Antonio.

Q. Is he here, or will he be available?

A. He is not here.

Mr. Coates: He is not here, Mr. Bobbitt. If you want him we will make him available to you.

Mr. Bobbitt: If he is not here, have you some one here, some officer of the company, that can give us that definite information?

Mr. Coates: I think so.

Q. Prior to the time of this new organization, the United Gas Public Service Company, Mr. Stein, as I understand, you were Manager of the distribution system and transmission lines clear on out to the well mouth—it was under your supervision and control as District Manager?

A. For some time prior.

Q. But after the new organization, then somebody else managed the transmission lines—you don't have anything to do with that?

A. I don't have anything to do with it now.

Q. All right. Mr. Stein, do you recall when the transmission line from Pescadito Junction to Jennings Junction was constructed?

A. In 1916.

Q. In 1916?

A. Yes.

[fol. 385] Q. When was the line constructed from Pescadito Junction to the Carolina-Tex. field?

A. Part of that line was constructed in 1922 and another part in 1923.

Q. What part in 1922?

A. The line from Pescadito Junction shown at Point No. 2 to Aguilares and to the old Schott field.

[fol. 386] Q. And when was the balance of it constructed?

A. The line from Aguilares to the Carolina-Texas field was constructed in 1923.

Q. In 1923?

A. Yes, sir.

Q. When was the line constructed from Reiser to the Carolina-Texas field, not Pescadito Junction? Where is Reiser shown? Will you mark the location of Reiser on this map?

A. (Witness places mark on map.) It would be No. 9.

Q. No. 9? Put a circle around it.

A. (Witness places circle around number.)

Q. Now, when was that line constructed from Reiser or the Reiser field to the Carolina-Texas field?

A. From Reiser to Aguilares in 1922 and from Aguilares to the Carolina-Texas field in 1923.

Q. Let's go back to your direct examination. I believe you testified this morning, Mr. Stein, that in your judgment you were serving nearly all of the people in the City of Laredo who were able to use gas?

A. We are serving nearly all of the people that were able to use gas.

Q. Nearly all?

A. Yes.

Q. Don't you know as a fact—don't you know it to be a fact, Mr. Stein, that there are hundreds of residents—resi-[fol. 387] dent citizens of Laredo who are burning mesquite wood for fuel instead of gas?

A. I don't know how many are burning mesquite wood for fuel.

Q. You know that there are many of them burning mesquite wood don't you?

A. I do not know that.

Q. You do not know that?

A. No.

Q. Don't you know that many people who are burning gas for cooking purposes, for instance, are burning wood for other purposes?

A. I don't know that.

Q. You don't know that?

A. No.

Q. Now, I believe you testified that nearly all of the homes in Laredo are—the way they are now constructed were equipped for the use of gas. Now, you just mean nearly all of a certain class or type, do you not, Mr. Stein?

A. We have gas connections and are serving gas to practically every type of home in Laredo.

Q. And don't you know that more than half of the homes that are constructed there—I am talking of the small homes—that there is no consideration given in the construction to the kind of fuel that they will use, and no in-
[fol. 388] stallation of gas facilities at all?

A. I don't know what they consider when they build their homes, but apparently to me it seems that they have the burning of gas in view.

Q. Well, why does it seem that they have?

A. Because they are not building chimneys like they use to, and they haven't any vent pipe in their kitchens for carrying off smokes and the products of combustion of other fuels.

Q. You are referring to the so-called modern homes, the bungalow style and the California style of home?

A. I am referring to practically all of them.

Q. You are not referring to what we might term the humble home of three or four rooms—two or three rooms, built out of pine lumber?

A. We have many customers who practically have no furniture and still have gas stoves and are using gas for cooking and heating in their stoves.

Q. Yes, and hundreds of the same type of people that burn mesquite instead of gas.

A. There are some, but I don't know how many.

Q. Hundreds of them, aren't there?

A. I couldn't say that; I would have to check it.

Q. Yes, sir. And there are hundreds of houses and homes that are not even connected with gas, that you know of.

A. I don't know how many, Mr. Bobbitt.

[fol. 389] Q. Yes, sir. Is it true, Mr. Stein, that a large number of users of gas when you furnished it there over a long period of years at fifty cents a thousand cubic feet have ceased to use gas?

Mr. Coates: Just a minute. There is no testimony in this record, is there, as to a rate of fifty cents a thousand.

Mr. Bobbitt: I am——

The Court: I believe this witness said yesterday that at one time they charged it. Maybe not.

Mr. Coates: I don't think there is any testimony here, and the question is predicated on testimony not contained in the record, and we object to it for that reason, as being immaterial and prejudicial, and as relating to a time too remote to have any bearing on this case in any way, shape, form, or fashion.

Mr. Bobbitt: We made no objection, if the Court please, to a long examination of this witness by counsel, as to the conditions there.

Mr. Coates: But it all related in time——

The Court: *In* fact you made no objections, Mr. Bobbitt, does not cut him off from making some, if he thinks they are proper.

Mr. Bobbitt: That is true.

[fol. 390] Mr. Coates: Our questions sought to direct themself to a time which was reasonably related to the effective date of this Railroad Commission's order, and not to going back into past history and at remote periods when conditions were entirely different, or least not shown to be the same.

The Court: I think my mind is clear about this matter now. The question assumes that at one time the gas company furnished gas at fifty cents.

Mr. Coates: Yes, sir.

The Court: Now, if that is not in the record, then the question is assuming something that is not in evidence, and would be improper.

Q. Well, may I ask the question this way, Mr. Stein,—over a long period of years didn't you furnish gas to the residential consumers there at fifty cents a thousand?

Mr. Coates: Just a moment. We object to the question and the answer sought to be elicited as immaterial, having no bearing on any issue in this case, prejudicial, and is a comparison sought to be made without showing the conditions are like or similar.

The Court: The objection is overruled.

Mr. Coates: Note our exception.

Mr. Bobbitt: Read the question, please.

(Thereupon the Reporter read the last preceding question as follows: "Well may I ask the question this way,

[fol. 391] Mr. Stein,—over a long period of years didn't you furnish gas to the residential consumers there at fifty cents a thousands?")

Mr. Coates: And as not certifying the time that he means by "a long period of years".

The Court: The objection is overruled.

Q. Would you answer the question, Mr. Stein?

A. We furnished gas in Laredo to what we termed our domestic consumers for a number of years at fifty cents per thousand cubic feet, gross.

Mr. Coates: And up to what time?

A. Up until the last few months of 1921, the exact date I don't remember.

Mr. Coates: Now, the evidence disclosing that this relates to a period more than twelve years ago, we renew our objection.

The Court: The objection is overruled. Both sides have gone into the history of this concern from its organization down to now.

Mr. Coates: Note our exception.

Q. From 1910 to 1921 you furnished gas down there at fifty cents a thousand to residential consumers?

A. Yes.

Q. In 1921 the price was raised to seventy-five cents a thousand?

A. Gross.

Q. Gross?

[fol. 392] Mr. Coates: Now, our objection goes to all this line of testimony.

The Court: Yes, sir.

Q. Now, my question is, Mr. Stein, you testified that it was your business to sell gas, when interrogated by Mr. Coates, and waiding modesty, you had done a good job selling all the gas you could?

A. I think we have done a very good job.

Q. Yes, sir, well, I think you have too, as far as that is concerned; but my question was this,—is it true that when you raised your price from fifty cents to seventy-five cents a thousand to residential consumers that you lost a substantial number of consumers?

A. I believe that is not true.

Q. You believe that is not true. Can you give us any accurate information about it?

A. It would take some time to gather that information.

Q. Yes, sir. You are manager of the concern——

A. Yes.

Q. —and were all these times?

A. I was not the manager in 1921.

Mr. Coates: We will stipulate that he was the manager of the concern, Mr. Bobbitt.

Mr. Bobbitt: I don't care about that; I am perfectly willing to stipulate some things——

The Court: Go ahead.

Mr. Bobbitt: But we would rather have testimony than [fol. 393] stipulations sometime.

The Court: Mr. Bobbitt, don't let's get into arguments between you lawyers.

Mr. Bobbitt: I beg the Court's pardon.

The Court: And let me say here that you have proved this man's connection at least six times this morning, from the day the concern was born until now, and it is unnecessary to prove that again.

Mr. Bobbitt: Yes, sir.

Q. You don't know accurately how many or if any customers you lost when you raised the price from fifty cents to seventy-five cents—you don't know about that?

A. I thought we gained some.

Q. You thought you gained some?

A. Yes.

Q. You thought raising the price would cause people to use the gas?

A. We have many more meters now than we had then.

Q. How much has the town grown in population since that time?

A. Well, probably fifty per cent.

Q. Fifty per cent. If I am correct in getting your answer here, that because they raised the price from fifty cents to seventy-five, would that cause more customers to use gas?

A. I think we have twice as many now.

Q. But do you think the raising of the price brought you [fol. 394] more customers?

A. I think it had nothing to do with it.

Q. Had nothing to do with it at all?

A. Yes.

Q. A reduction of the price has nothing to do with it?

A. I believe it would not help out any—add any customers materially; it may a few—one, or two or three may come on but there won't be any large number, nor will there be any exceptional increase.

Q. You never tried it, did you?

A. Well, that would certainly follow for the reasons I told you before, that the town is very well saturated.

Q. Uh huh. Now, you spoke of unprofitable customers Mr. Stein. I don't want to repeat anything here particularly, but you charge a dollar a thousand—you charge a dollar to each taker of gas or user for the first thousand cubic feet, whether they use five hundred feet or a thousand, don't you?

A. Our rate is at present one dollar minimum per month, regardless of the amount used, so long as it is not over—the amount used will not figure over one dollar.

Q. Exactly; and every residential user pays a dollar for a month—the first month, or the first thousand, whether they use half of it or not?

A. They pay a minimum charge of one dollar per month. They are entitled to use a certain amount of gas for that [fol. 395] dollar; if they don't use it, why, it is——

Q. Exactly some of them don't use it.

A. Very, very few, except in the summer time, quite a number of them get under the minimum.

Q. And when they use under the minimum for any month then you get more than the seventy-five cents a thousand for your gas, do you not?

A. If a consumer would use less than the amount, the rate would figure out, of course, at a higher figure.

Q. Now, you testified yesterday, Mr. Stein, at some length about the loss of this industrial business up and down the river?

A. Yes.

Q. On these irrigation plants. If I understood you that you lost that business because the electric company — to furnish fuel or energy cheaper than you could furnish gas?

A. Yes.

Q. Is that correct?

A. Yes they could, considering all the costs of operating the gas engines and the costs of operating an electric motor.

Q. Yes.

A. Over-all costs, not the direct fuel or power costs.

Q. Do you remember how many users of gas you had, for instance, south of Laredo—industrial users, at the peak?

[fol. 396] A. I don't remember the figures.

Q. Approximately how many were there, Mr. Stein?

A. I don't know; I have never gathered that information.

Q. Well, north of Laredo, up on the irrigation systems north of Laredo, how many users, approximately, did you have?

A. I would have to check into that, too. I don't remember the figures.

Q. You lost that—is it true that you lost that business at the time you raised your rate on gas for industrial consumption?

A. No.

Q. How is that?

A. No.

Q. Don't you know that that is true?

A. We did not lose any because we increased the rate. If we increased the rate——

Q. How do you know that that is not the reason?

A. Because we had no customers tell us so. That would certainly come in a complaint about it I believe, if that was the reason -or there discontinuing the use of gas.

Q. You have not had any controversies with those users about domestic gas?

A. Domestic gas?

Q. I mean industrial gas.

[fol. 397] A. I have had—I have discussed rates with our industrial customers from time to time.

Q. Well, you have had considerable rounds with a good many of them, haven't you, about the use or non-use of gas?

A. I don't think I have had any rounds with any of them if you mean a round like in a prize fight match.

Q. I don't mean that. You had controversies with them. They were seeking to get gas at a lower price—get you to furnish it to them?

A. Well, that is done frequently, regardless of what rate you sell them, they would like to get a lower rate.

Q. And they quit using gas and went to electricity?

A. Yes, they did in a number of instances where they had to buy additional equipment, or if their equipment was——

Q. Now, if it is true that those former users of industrial gas now burn crude oil and coal?

A. Well, some of those original customers have gone, and the plants are gone, and the farms have been abandoned; there are very few of those original customers left there.

Q. But there are some in operation?

A. There are a few, and we are furnishing all that can possibly utilize our service.

Q. Well, answer my question. A lot of them are using oil and coal?

A. A lot of them, no.

Q. Several of them?

A. I don't know any north of town that are using coal or [fol. 398] crude oil, along our line, except it be in an engine that I don't know about.

Q. Now, you spoke of the expense in connection with the use of electric power for those pumping plants, instead of gas for fuel—that they had to have an attendant to look after the gas engine. Is that true?

A. Yes they kept a man there—had to keep a man with the engine from the time it started until it finished.

Q. That was just a fellow to turn on and turn off the gas, wasn't it?

A. No, he had to see that this engine was properly lubricated, and if it stopped running he had to stop and repair it.

Q. What engine are you talking about?

A. Any gas engine.

Q. Aren't there any repairs to an engine run by an electric current?

A. Electric motors run a long time without attention.

Q. Well, now, Mr. Stein, isn't it true that you have a method of running engines and other facilities by gas, on what is called an automatic system, where you don't need an attendant?

A. Well, there are no farmers in that section that have invested in that high type of equipment.

Q. Well, they are not investing in gas equipment now at all, are they?

A. In some cases they have in the last few years.

[fol. 399] Q. Uh huh.

A. I have just connected an industrial customer in North Laredo since I have been back down there.

Q. That is the Smelter, isn't it?

A. No, sir, it is a pumping plant and steam boiler.

Q. Which one?

A. J. O. Walker.

Q. J. O. Walker?

A. Yes.

Q. And he is using gas?

A. He is using gas. He is using gas in four of his plants, and he is well satisfied.

Q. He is well satisfied. He has been kicking about the rate, hasn't he?

A. Oh, not enough to speak of. He would like to get a lower rate like all farmers do and all customers do.

Q. Like all customers do?

A. They would like to get a lower rate if they can get one, naturally, sure.

Q. He did not kick strong enough like the Houseman Packing Company?

A. He found it would be more advantageous to him to use gas than any other fuel. He had coal grates under his boilers when he changed, and he pulled them out and changed by installing gas burners and utilize the gas, and he had us run a special line to him and help pay for it.

[fol. 400] Q. And you undertake to get other customers to use gas, like J. O. Walker?

A. Why, indeed.

Q. You have?

A. Yes, we are contacting prospects.

Q. What do you charge Walker for industrial gas?

A. His rate is twenty cents a thousand cubic feet.

Q. Have you ever tried a twelve or fifteen cent rate on those fellows that are not using gas, to see if they would not take it up?

A. How long ago?

Q. Well, any time—six month, twelve month?

A. I don't know of anyone that we have lost up there because of the rate.

Q. It was because of something else?

A. Yes, other reasons.

Q. You don't think that reducing the price from twenty cents to ten cents would have any effect on the number of customers using industrial gas, or the volume of gas taken?

A. The ten cent price is something that is not—is not very practical, and I see no reason to consider it because in small amounts you may not be able to furnish gas at ten cents a thousand.

Q. Well, what about twelve?

[fol. 401] A. Well, there is a line somewhere. Just where it is I couldn't say, offhand.

Q. It is in the neighborhood of twelve. You can make lots of money off of it, can't you?

A. It depends on the amount you sell the customers.

Q. Now, going to the Houseman Packing Company. If I understand you you said they quit using gas and went to using crude oil?

A. Well, the change was made while I was in Mississippi.

Q. And you had been right on the job since you got back from Mississippi?

A. I tried to sell him gas again.

Q. And you made every effort to get him to go back to the use of gas?

A. Yes, and he promised—he said he would be very glad to use gas if the equivalent of gas would be 5600 cubic feet to a barrel of oil, and we have proved it to him, but he has been delaying the change-over to gas but the prospect or he will right soon, if he continues to operate his plant.

Q. He promised to come back to the use of gas if he could get it at a reasonable rate, didn't he?

A. At our existing rate, at that time when we talked to him.

Q. What was your existing rates when you talked to him?

A. We offered him our industrial schedule.

Q. Well, what is that? I don't know—I am talking about [fol. 402] rates. What price did you offer to sell him gas for?

A. I would have to refer to them to give it to you.

Q. You would have to get some kind of a schedule or something?

A. Yes, we have printed schedules.

Q. Well, don't you know the price that you made him on gas?

A. We have quite a number of industrial schedules. The price varies according to the class of consumer and the amount of consumption, and the price varies in several other ways; so we can't give any average price.

Q. Yes. Now, he is burning crude oil for fuel at this time?

A. He is burning his residue oil, not crude oil.

Q. Well, he is burning his residue oil that he hauls from the oil field sixty miles away?

A. He is burning oil—some residue oil that he got from the Motor Fuel Products Company right now, most of it.

Q. Now, his general policy—I think you are acquainted with the real facts; you testified at considerable length yesterday that the major portion of his fuel that he burned in the packing concern is oil that he trucks in from the field way out in the Carolina-Texas oil field, isn't that true?

A. He has it trucked in for him, I think, and he had——

Q. Well, it doesn't make any difference.

[fol. 403] A. He has now some oil shipped in to him.

Q. Well, it is either shipped in or trucked in from the oil fields, and is burned there as fuel.

A. Yes, he uses his—he takes his crude oil and refines it and takes the gasoline from it and uses it in the motor cars, and uses the gas oil in his engines, and burns the residue.

Q. And has all the facilities there installed in his plant?

A. All of the facilities are installed there.

Q. Yes; and you are trying to get him to use gas?

A. Yes.

Q. And he uses oil or the residue, whatever it is?

A. And he uses very little, too.

Q. Very little what?

A. Oil, compared to what he used to use.

Q. Well, now, how do you know all of the details of that?

A. I don't know that—I have that from his—from what he says.

Q. Well, that plant is running now at pretty much full capacity, isn't it, that packing plant?

A. No.

Q. Now, at what capacity is it running?

A. They have curtailed operations considerably.

[fol. 404] Q. Well, what do you mean by considerable? How much?

A. Possibly half.

Q. Possibly half. You don't know about that, though?

A. I am not definite about it; not right sure about it.

Q. Yes, sir.

A. I know that they curtailed the operations there to some extent.

Q. Well, now, Mr. Stein, aren't there other refineries located right in or right near the area where the oil is produced? Aren't other refineries there that use gas, furnished by your company, for fuel purposes?

A. Please, which refinery did you state there?

Q. Well, say the Misko Refinery; aren't you furnishing them gas?

A. We are not furnishing them gas at the present time.

Q. You have furnished them gas at various times?

A. We have in the years gone by.

Q. You furnished gas to the little Hall Refinery up there?

A. No, I believe not.

Q. You never did?

A. I don't think so.

Q. Did you furnish gas to the Humble refineries?

A. The Humble refineries—where is that?

Q. Well, away over at Houston, on the Buffalo Bayou?

A. That's out of my jurisdiction; I don't know what they do over there.

Q. Well, I am not asking you what you know that they do over there; don't you know that the large refineries, [fol. 405] that are refining oil, because of the savings in their operations because they can get gas for their fuel, that they are burning gas because of the price of it?

Mr. Coates: The same objection, because no proper predicate is laid by showing that conditions are like and similar, and comparable circumstances, and all the other objections directed to the comparison of prices where the conditions are not so shown.

The Court: I think if your objection was that the question was asked of the witness several times and has been answered several times, that he didn't know, I would sustain the objection.

Mr. Coates: All right, and on that ground also.

The Court: The objection is sustained.

Mr. Bobbitt: Well, I didn't think he had—perhaps I am in error about that, but I didn't know he had answered it.

Q. Now, this gas transmission line, Mr. Stein, running from the Carolina-Texas field to the city of Laredo; do you know the capacity of that line for gas; how many thousand cubic feet a day it would carry?

A. I don't know.

Q. Have you any idea?

A. I could not make you even a very close guess.

Q. Didn't you operate that company for about fifteen years?

A. Yes, I operated it for some time, but the capacity depends quite a lot on the pressures in the field and the pres-
[fol. 406] sures at the delivery points, and also of course upon the various sizes of lines, and without those factors, I could not name a capacity, like you would a barrel, or something like that.

Q. Well now, Mr. Stein——

The Court: Let's don't argue with the witness; he says he doesn't know, and that means that he doesn't know. The fact that somebody thinks he should know, wouldn't help out if he does not know.

Q. Mr. Stein, what amount of gas per day is being transmitted through this line at the present time?

Mr. Coates: Per what day, Mr. Bobbitt?

Q. Well, I am asking how much gas is being transported through that line, yesterday, for instance, or any particular time.

Mr. Coates: We will try to get you those figures.

Q. I am asking your district manager there, if he knows.

The Court: Do you know, Mr. Stein?

A. I do not know how much they delivered yesterday or any one day because it varies from time to time, dependent on the requirements of the load.

Q. Take on an average day, Mr. Stein.

A. In what month?

Q. In January, or in March, for instance.

A. It varies from month to month and from year to year.

Q. Take any month.

A. I would have to look up those figures; I can not keep those figures in my mind.

[fol. 407] Q. On the heaviest day——

The Court: They will furnish those figures, and the witness doesn't know what they are now.

Mr. Bobbitt: I wanted to ask this witness some other questions on that; and if we can get that now, it is important to have it.

The Court: He says he doesn't know, and there is no use in burdening the record with those questions until he does get it.

Q. Let me ask you this question, Mr. Stein. Your facilities for the transportation of gas from the field to the city gate, the capacity of those facilities exceeds the amount of gas that is required to serve the city of Laredo and all persons taking gas through that line; isn't that true?

A. We have excess facilities at this time.

Q. You have excess facilities, and you must maintain those facilities, as I understand it, to serve the residential consumers in the city of Laredo?

A. And the industrial and the commercial.

Q. And you do maintain them?

A. Yes.

Q. And you have the same facilities, whether you have a large or a small amount of the industrial consumers?

A. There is a limit to the amount of gas that could be put through that line.

Q. I understand that.

[fol. 408] A. And that would be the difference between its capacity and the highest requirements that the domestic customers would have for some time.

Q. We are not asking all that detail; I am just asking you a question about the——

Mr. Coates: And he is trying to answer the question.

A. I am trying to answer it the best I know how.

Mr. Coates: And I contend that what he has said is in answer to your question.

Mr. Bobbitt: Well, I think not, but I don't care to argue about it.

The Court: Let's not argue about it gentlemen.

Q. Mr. Stein, you are serving gas through that line to the Central Power & Light Company, now, for industrial purposes, are you not?

A. The Central Power & Light Company in Laredo uses——

Q. I didn't ask you about the amount. You are now serving gas through those pipe lines to the Central Power & Light Company in Laredo?

A. We are ready to serve them.

Q. And they are taking gas right now, aren't they, Mr. Stein?

A. They may not be taking a foot of gas today.

Q. Well, they are one of your regular customers, and the testimony shows that they are using gas.

A. I doubt that they will take a cubic foot of gas today.

Q. You are hooked up to serve them, and you do serve [fol. 409] them; you are already connected to their plant?

A. We are ready to serve them, yes.

Q. And you don't know the amount that they are taking now?

A. No, I do not.

Q. You don't know.

A. No.

Q. You pay for that gas, in the field, four and five cents a thousand cubic feet, don't you?

A. I want to get myself clear on that point; I am handling the distribution department, and the price paid by the company for gas in the field is something that is handled by other departments entirely.

The Court: That is already in the record, anyway.

Q. What additional cost to the purchase price of gas would incur to the Company for the transportation of a million cubic feet of gas per day, through that pipe line facilities to the Central Power & Light Company's plant?

Mr. Coates: Now, we object to that question and the answer sought to be elicited from the witness, for the reason that no proper predicate has been laid by showing that there is a market for this additional million cubic feet a day to which he refers, and that such additional gas could be sold. Second, because the question assumes the doing of an unlawful act by the company, and its continuance, in that it assumes discrimination against customers of all other classes by charging all other costs of service other than the [fol. 410] well mouth price to the other classes of customers, and likewise assumes discrimination against all other industrial consumers located elsewhere but taking gas under like and similar conditions, and assumes a sale without taking into account and including in the price a fair prorata part of the cost of serving that consumer.

The Court: Read the question, Mr. Reporter.

(Whereupon the following question was read to the court: "What additional cost to the purchase price of gas would incur to the company for the transportation of a million cubic feet of gas per day, through that pipe line facilities, to the Central Power & Light Company's plant?")

Mr. Coates: And we object likewise, because the question does not give the material factors which are necessary to any answer or any intelligent answer to the question.

The Court: I will sustain that objection.

Mr. Bobbitt: Note our exception. Now, let me understand the Court: you sustained the objection to what portion of the question?

The Court: To the whole question; the question itself is not so framed that any intelligent answer can be made to it.

Q. Mr. Stein, taking into account all elements of expense that would properly accrue to the company for the transportation of a million cubic feet of gas from the wells through that transmission line to the burner of the Central Power & Light Company for industrial purposes, in addition to the purchase price of the gas, what is such additional cost or expense?

[fol. 411] Mr. Coates: The same objection, and the further objection, that——

The Court: Sustain the objection.

Mr. Bobbitt: Note our exception. If I understood the Court, if you please, on yesterday they made the objection to this line of testimony on the ground that it was not shown that the facilities from the city gate to the customer was taken into account. Now, we have a customer here who is taking gas, with the facilities all installed and is taking gas according to the testimony, daily, and they complained about the loss of industrial business, gas business, and what we are trying to get at, if the Court please, is the costs that the company would incur in transporting gas from the field to the customer, in addition to the purchase price; and I am asking him to take into account every element that would be experienced by the company, in costs, in addition to the purchase price, and tell us what that would be, if he knows.

The Court: And I sustained the objection on it, because I do not believe the question, as asked, was capable of being intelligently answered by anybody. I think you left out some elements that I understood were in the question yesterday.

Q. Well, in checking over these notes here, I believe that when you made this contract referred to this morning, Mr. Stein, between the South Texas Gas Company and the Southern Gas Company, you were looking for an additional supply of gas. You made that contract in 1929, in the Carolina-Texas field?

A. Yes.

[fol. 412] Q. What was the maximum number of meters, Mr. Stein, if you know, that you had in the city of Laredo for residential users?

A. I don't know.

Q. You don't know?

A. Because the classification now is different than it was.

Q. Could you get that information for us?

A. It could be done, but it would mean an analysis of practically every customer we have.

Q. Can't you, without any considerable trouble, find us the largest number of residential gas users you have in Laredo?

A. We would have to segregate all of the government and municipal and all of the commercial, in order to do that, and that would require a check of every user on the line at that time, to determine whether he was governmental or municipal, or some other class.

Q. How do you know you have the saturation point, if you don't have that information?

Mr. Coates: Are you asking for the total number of meters in Laredo of all classes, or all the residential?

Q. I am asking about the residential, and he went on talking about something else.

A. There are vacant houses in the community.

Q. I am not talking about vacant houses, but the highest number of meters you have had in the city of Laredo.

A. I understood you to ask me about the saturation point.

Q. That was another question.

[fol. 413] A. I don't know whether I got just what your question was or not.

The Court: Why not ask the question over again, and save all this argument.

Q. What is the highest number of residential meters that you have had in the City of Laredo?

A. Well, I don't——

Mr. Coates: Tell him the figures you have, and see whether or not that will satisfy his question.

Q. I just want the number, if he knows it.

A. I have a figure, of the class of domestics carried in 1913, of 5113 residential——

Mr. Coates: Don't you mean 1930, Mr. Stein?

A. I said 1913, I should have said in 1930.

Mr. Bobbitt: Now, Mr. Coates, this witness is the district manager, and he knows how to testify.

Mr. Coates: Well, obviously you don't want a plain error of that kind to appear in the record, and by obvious inadvertence he said 1913 when he meant 1930, and I don't think it was improper to correct him, or was misleading.

Mr. Bobbitt: Well, if you think it wasn't improper——

Q. Will you give us that figure again?

A. 5113 meters, in the domestic classification in 1930.

Q. What do you mean by that domestic classification?

A. The domestic classification included all meters that were serving gas at the 75 cents rate, less the 10 per cent discount.

Q. What other meters did you have at that time?

[fol. 414] A. We had some hotels and restaurants and bakeries.

Q. How many?

A. I don't know.

Q. Haven't you got those figures here?

A. I haven't got those figures.

Q. Can you get them?

A. Yes, I can.

Q. Where did you get those figures?

A. I copied these from the same statement that had the other information.

Q. You can get that information?

A. Yes, but we will have to send to Laredo for it.

Mr. Coates: We will be glad to get it, Mr. Bobbitt.

A. Indeed we will.

Q. That was in the year 1930. You had 5113 domestic meters?

A. Yes.

Q. That means residential meters, doesn't it?

A. It means government, municipal, and all the meters in Fort McIntosh, and there are included in that some 130 meters; and all the commercial establishments, stores and so forth, which are not included in residential now.

Q. They paid 75 cents?

A. They paid the same rate; and we classify them according to use, now.

Q. How many meters do you have now—the first of December, or December 31, 1933?

[fol. 415] Mr. Coates: Total, or residential?

Q. Of that class he is talking about.

A. That is not carried in that class now.

Q. When did you change your class on it?

A. We changed it to get a more correct classification.

Q. I say when did you change it?

A. Early in 1931.

Q. You can not give us the number of domestic meters at this time or at the first of January, 1934?

A. Not the domestic, no; not the way we had them classified previously.

Q. What is the total on the 75 cents class, now?

A. We are not carrying them that way; I would have to analyze the records, and recheck that.

Q. How do you carry it?

A. The consumption is now carried according to the use to which the gas is put; that is, where it is used.

Q. What was that now?

A. In other words, residential, regardless of rate—of course the residential rate is 75 cents less 10 per cent discount; the commercial includes stores which pays 75 cents less 10 percent and it also includes other industries or other establishments and then we have an industrial—some of the industrials pay a 75 cent rate.

Q. They do?

A. Yes.

Q. How many of them?

[fol. 416] A. I don't know. I will have to check into that; they are classed as an industrial, simply because a very small amount of gas is used, and the customer prefers that rate.

Q. You can not give us the number of users paying the 75 cents rate at this time?

A. I can not do that; we can get the information for you.

Q. You can do that shortly?

A. It will take a little time, but we can do it for you.

Q. Will you try to get that as of December 31, 1933?

A. I will have a notation made of that.

Recess had from 11:20 A. M. until 11:30 A. M.

Q. Mr. Stein, I will ask you to look at that letter, and identify it, for the purposes only of identification.

Mr. Coates: Do you have another copy of that letter, Mr. Bobbitt?

Q. No. We are not introducing it, but only asking him to identify it. Did you send the original letter of which this is a copy?

A. I mailed the original letter of which that is a copy.

Q. It is a letter dated at Laredo, Texas, June 26, 1923, and addressed to Mr. G. R. Page, Houston, Texas. You mailed the original of which this is a copy?

A. Yes.

Q. And this other communication here, bearing date, Laredo, Texas, April 14, 1921, addressed to Mr. G. R. Page, Houston, Texas. Will you examine that also?

[fols. 417-450] A. Yes, I have examined it.

Q. And did you mail the original of which that is a copy?

A. I did.

Q. All right, thank you. Now, we will have them marked by the reporter, for identification only.

(Said instruments then marked by the reporter for purposes of identification only, with the initials HB.)

Mr. Coates: You are not introducing that?

Q. No, sir, not at this time. I believe you have a memorandum, Mr. Stein, of the information we requested you to get, and which you said you can get for us?

A. Do you have that, Mr. Scurry?

Mr. Scurry: I made a memorandum of it, and will check it with Mr. Bobbitt, to be sure.

Q. One other question, Mr. Stein, with respect to these letters which you just examined and identified. What

official capacity did you hold at the time these communications were written?

A. I was assistant treasurer of the Border Gas Company.

Q. At the time both letters were written?

A. Yes.

Q. One dated June 26, 1923, and the other dated April 14, 1921?

A. Yes.

Q. And you were the assistant treasurer at both those times?

A. Yes.

Q. I believe that is all for the present.

Mr. Coates: No further questions.

(Witness Stein is excused.)

* * * * * * *

[fol. 451] Testimony of M. A. Abernathy

Q. The United Gas Public Service Company owns the controlling interest in the Southern Gas Company?

A. I believe so, yes.

[fol. 452] Q. And the United Gas Public Service Company owns a controlling interest in the South Texas Gas Company also; that is correct, isn't it?

A. Well, I don't believe the South Texas Gas Company is in existence now.

Q. Well, its properties, and all the benefits that accrued under this contract is owned by the United Gas Public Service Co.?

A. Yes.

Q. And so, as a matter of fact, both companies, and all benefits accruing to either of the companies under the contract, is owned by the United Gas Public Service Company. That is correct, is it not?

A. Well, I don't know whether the United Gas Public Service Company owns all of the Southern Gas Company's stock or not.

Q. It owns a controlling interest?

A. I think so, yes.

Q. Don't you know that, as superintendent of transportation and transmission properties?

A. I believe that to be true, yes.

Q. Yes, sir. So as a matter of fact, Mr. Abernathy, it wouldn't make any difference who had the benefit or who had the loss, as a practical matter, to the owning and operating company, would it?

A. Well, it would make some difference, yes.

Q. What difference?

A. To the extent that the ownership might be different, [fol. 453] I think it would make a difference.

Q. It would make a little difference, according to the little difference in the stock ownership?

A. Yes.

Q. But the United Gas Public Service Company can do anything it desires with either of the companies, ow-ing the major interest in both of them?

Mr. Coates: We believe that is immaterial.

The Court: I sustain the objection, because that is a legal conclusion.

Q. Now, page 1 of Exhibit 8, that you have been testifying about, Mr. Abernathy; that is the estimated investment, as of November 1, 1929. It is an estimated investment all the way thru, isn't it?

A. Yes.

Q. That's correct, isn't it?

A. Yes.

Q. Which you have taken all the way through here?

A. Yes.

Q. Did you state that the engineering department prepared these estimated figures?

A. Yes.

Q. You did not prepare these costs?

A. No.

Q. It is an estimate all the way through. Now, you state on page 1 of Exhibit 8, Re-arrangement expense, November [fol. 454] and December, 1929, $7,375.00. Now what do you mean by that "Re-arrangement Expense"?

A. I mean that that is the estimate of the cost the Southern Gas Company incurred in re-arrangement of their gathering system to connect with the South Texas Gas Company's pipe line.

Q. You don't know anything about the accuracy of that figure, do you?

A. Well, it is an estimate prepared by the Engineering Department.

Q. Yes, but you of your own knowledge don't know anything about it?

A. No.

Q. And all the way through this exhibit—each page of it, it is an estimated expenditure and estimated cost, isn't it?

A. No, no; they are not all estimated costs.

Q. Well, now, page 1 is an estimated investment, isn't it, that you referred to?

A. It is an estimate of the investment based upon the facilities constructed, yes.

Q. Page 2, line 1, "the investment shown above is the estimated expenditure by Southern Gas Company." That is an estimate, isn't it?

A. I beg your pardon; I didn't understand you.

Q. That is an estimate, isn't it?

A. Which?

[fol. 455] Q. You state here "The investment shown below is the estimated expenditure"—that is an estimate, isn't it?

A. Yes, it is an estimate of the actual costs.

Q. Page 3, you refer to estimated expenditures by Southern Gas Company—that is just an estimate, isn't it?

A. Now, let me ask you, which figure are you referring to as being estimated?

Q. Page 3—I am just taking your figures in the first line of the page there, page 3.

A. The $37,293.00?

Q. Yes.

A. In the first line?

Q. Yes.

A. Yes, that is.

Q. That is an estimate?

A. That is an estimate, yes.

Q. Yes, and, as I say, on each page here you refer to estimated investment, and then you set out the particular figures.

A. Yes.

Q. It is all an estimate, isn't it?

A. Yes, it is an estimate of the actual costs.

Q. Yes, sir, and being an estimate, Mr. Abernathy, it may be correct and it may not be correct—that is true, isn't it?

A. There is that possibility, yes.

Q. Yes, sir. Now, if I understand this exhibit, Mr. Abernathy, and the conclusions on the figure reached here, it costs more to own and operate these properties than it would to have paid the one cent gathering charge in addi- [fol. 456] tion to the purchase price of the gas, wouldn't it, according to your own figures?

A. Yes.

Q. That is correct, isn't it?

A. Yes.

Q. Based on the estimates that you have made here?

A. Yes.

Q. Now, you testified about this three cent gas, that none of that goes to Laredo because of the volume, I believe, two million feet a day are not required for the Laredo market, and for that reason, why, you didn't send Laredo any of the three cent gas, is that corect?

A. Well, that is not the only reason.

Q. Uh huh. Is that the main reason?

A. I don't know that I understand just what you mean, Mr. Bobbitt. You will have to——

Q. Well, for what reasons—give us the reasons why you do not furnish the Laredo market the three cent gas instead of the four and five cent gas?

A. Well, in the first place, we have gas in the Carolina-Tex field and in the West Jennings field that we have prior commitments on, that was purchased for that purpose, and if this gas were sent up there it would mean that we would have to shut off all the other gas; and, in the next place, we couldn't take a sufficient quantity to Laredo to justify—to equal that minimum that we have under the contract.

Q. You have, as I understand the set-up in the pleadings [fol. 457] in this case, this line from Jennings Junction through the Jim Hogg Junction, on up to the Bruni Station and Carolina-Tex Junction——

A. Yes.

Q. On to the Carolina-Tex field?

A. Yes.

Q. And on down to Aguilares, and through to Laredo?

A. Yes.

Q. That is all inter-connected, is it not?

A. Yes.

Q. And that is one of the benefits that you contend, I believe, as an operating company, accrues to Laredo, being on an inter-connected system—is that correct?

A. Well, I don't know; I don't have that information; I don't know what the contentions are.

Mr. Coates: He said he didn't know what the lawyers were contending?

The Court: That is right.

Q. This section over here (indicating on map) near the figure 10 on the map—figure 10 is what is commonly termed the East Jennings field, isn't it, on the map here?

A. No, the figure 10 is not the East Jennings field.

Q. Well, where is the East Jennings field?

A. This area here (indicating) is commonly referred to as the East Jennings field—these wells that are shown on the map here.

Q. Well, that is No. 11—that is what is generally termed [fol. 458] the East Jennings field; and this portion over here (indicating) that I am marking 12 in a circle, that is commonly known as the West Jennings field, is it not?

A. Yes.

Q. It is entirely practicable, isn't it, Mr. Abernathy, to transport gas from either the east or the West Jennings field through this interconnected system, through the Carolina-Tex field into Laredo?

A. It would be possible if the pressures were sufficient, but in that case I would think that you would have to include a part of the facilities through which that comes, probably.

Q. I didn't ask you that. We will get around to that. I say it is practicable for an interconnected system, such as the United Gas Public Service Company, to transport gas along in the direction that I have indicated.

A. I wouldn't say it is practicable; I would say it is possible.

Q. Well, if you run out of gas, as you indicate the Carolina-Tex field is being depleted——

A. Yes.

Q. If you run out of gas in the Carolina-Tex field——

A. Yes.

Q. —and for some reason this so-called transmission line from Pescadito Junction to the Jennings field is not carry-

ing gas, then you would have to get gas from some place else, wouldn't you?

A. Yes.

[fol. 459] Q. Wouldn't you probably get it from the Jennings field?

A. I don't—I haven't given that any particular consideration. I don't think——

Q. But that is practicable, isn't it?

Mr. Coates: Now, let him finish his answer. Mr. Bobbitt.

A. I don't think the pressures in the Jennings field are sufficient to feed the gas around in that manner.

Q. But if it's necessary, you would put the pressure to it, wouldn't you?

A. I don't know. It might involve a considerable investment. I don't know whether it would be justified or not.

Q. You don't know?

A. No.

Q. Now, as a matter of fact, Mr. Abernathy, this new field marked down here—what was that called—what did you name that field, the Fansler field?

A. We generally call it the Fansler field.

Q. And that is where the three-cent gas comes from?

A. Yes.

Q. Practically all of that gas that you get out of that field at the present time, as I understand it, goes to Mexico?

A. All of it does.

Q. All of it goes to Mexico?

A. Yes, sir.

Q. A large amount of the gas from the West Jennings field, here at figure 12 (indicating) also goes to Mexico, doesn't it?

[fol. 460] A. Well, I wouldn't say a large amount; some of it does, yes.

Q. Do you know how much?

A. Not offhand, not exactly, no.

Q. Well, can you estimate that, what portion of the gas production from the West Jennings field goes to Mexico?

Mr. Coates: The witness has said that he doesn't know.

The Court: He is now asking him for an estimate. If he can make an estimate I will let him make it.

A. I don't know. I haven't looked at the figures of the

production from that field recently, and I don't know. A good portion of it is going towards Mexico, yes.

Q. Well, you don't know how much, if any, goes from the West Jennings field through this line to Pescado to Junction, do you?

A. Yes, I know that there is gas going through that line.

Q. I say you don't know how much.

A. I don't know exactly, no.

Q. Do you know more about the gas coming in this direction from the West Jennings field than you do the other way?

A. Well, I don't recall just how much has been produced in the Jennings field.

Q. Now, likewise, Mr. Abernathy, gas from the West Jennings field and the East Jennings field furnishes a supply of gas to the Rio Grande Valley points, through this pipe line?

A. No, sir.

Q. It does not?

[fol. 461] A. No, sir.

Q. Where does the gas come from that goes on through the Jim Hogg Junction to the Valley?

A. It comes from Bruni.

Q. All of it?

A. I believe at this time—right at this time all of it comes from that area.

Q. Does any of it come from the Carolina-Tex area?

A. No, sir.

Q. Now, you have testified something about the Carolina-Tex field becoming depleted, or the wells getting low there. Do you know the actual production of gas in the Carolina-Tex field at this time, generally?

A. Generally?

Q. Not only your own properties, but other properties?

A. I don't know the totals—the total amount being produced from the field, no.

Q. It is quite a large amount, is it not?

A. I know about how much we are producing.

Q. Well, about how much?

A. I mean how much we are taking out of there.

Q. You mean taking to Laredo, or taking for all purposes?

A. Well, we are not taking it for any other purpose except to Laredo?

Q. You are not taking any of the Carolina-Tex field gas except to Laredo?

A. Well, except to Laredo and the other towns along the line.

Q. Yes; you have an abundant supply of gas from the [fol. 462] Carolina-Tex field to the city of Laredo and other towns on this line?

A. I don't think so.

Q. You don't?

A. No, sir, I wouldn't call it an abundant supply.

Q. Well, have you sufficient to furnish all the supply—all the requirements at the present time?

A. Yes, we have sufficient to do that.

Q. Then all the gas which goes to Laredo or along this line to these other towns, comes from the Carolina-Tex field?

A. No, there is part of it that comes from the Jennings field.

Q. How much, if you know?

A. I am not certain that I know the exact figure. I think it is running about two or three hundred thousand feet a day, coming from that field.

Q. Two or three hundred thousand feet a day?

A. Yes, I think so.

Q. That is the line you testified about having so many hot spots in it this morning, isn't it?

A. Yes.

Q. That is the line?

A. Yes.

Q. And that is the line that was used one day—used to transport gas one day in 1931, wasn't it?

A. No, I don't recall—I don't know offhand how many days it was used in 1931.

Q. Well, as Superintendent of Transportation and Transmission, don't you know as a matter of fact, and didn't you [fol. 463] so testify in the other hearing, that this line was used one day, and only one day for the transportation of gas in 1931—the year 1931?

A. I don't recall testifying for the year 1931. I know that the line was not used very much.

Q. Well, don't you know, as Superintendent of Transportation for the company—don't you know now as a fact that it was used only one day in 1931?

A. No, I do not know.

Q. You don't know that?

A. No.

[fol. 464] Q. Do you know whether it was used two days or three days?

A. I know that it was not used a great deal. It was used possibly several times during the year.

Q. Possibly, but you don't know?

A. I don't know exactly the number, no.

Q. You can't even estimate whether it was one day or five?

A. It was several.

Q. You now testify it was used several days in 1931?

A. Several times.

Q. Well, several times in one day or on different days? I think this is important; I want to be certain about these things.

A. No, I don't recall the exact number of times it was used.

Q. Well, now, isn't it true, Mr. Abernathy, that this Carolina-Tex. field produces each day and there are now taken from the Carolina-Tex. field each day a good many million cubic feet of gas for transmission to San Antonio, Houston and other places?

Mr. Coates: That calls for the witness to know what Mr. Bobbitt means by "a good many millions". If you will limit it or circumscribe it he can give you an answer.

Mr. Bobbitt: The witness is Superintendent of Transportation, and he has testified that this field is being depleted.

Mr. Coates: We object to the question as too broad and [fol. 465] too vague and as not being capable of a direct categorical answer.

Mr. Bobbitt: Well, let's don't have it direct and categorical.

Q. Can you give any reasonable estimate, Mr. Abernathy, as Superintendent of Transportation, of the number of million cubic feet per day taken at the present time from the Carolina-Tex. field?

A. During the year 1933 our company took from the Carolina-Tex. field, I think the figures show——

Q. I am not asking what your company took, unless you want to give it to us.

A. Well, I don't have the figures on what the other companies have taken.

Q. Have you made any estimate—you are interested in the permanency of that field, are you not, as a gas producing area?

A. Yes.

Q. Well, have you made any check or tabulation as to what other companies are taking out of that field?

A. I have not.

Q. Has the company made any?

A. I imagine they have.

Q. You don't know anything about it?

A. I have not personally seen the figures, no.

Q. Mr. Abernathy, what has been the open flow of gas wells—what is the open flow at the present time in the Carolina-Tex. field?

[fol. 466] A. The Mirando sand wells, I think, have an open flow of probably about two, or possibly three or four million feet, and twenty-two hundred foot sand wells have an open flow, I believe, of around eight or possibly ten million; that is my recollection.

Q. One sand has two or three million open flow and another sand ten million?

A. Eight to ten million, I think.

The Court: That is per day?

A. Per day.

Q. Is that the total flow on each well?

A. Each well.

Q. How many wells?

A. Let's see. I believe that we have three wells in the twenty-two hundred foot sand.

Q. Ten million cubic feet each per day?

A. Eight to ten, I said. I don't have the exact figure.

Q. All right.

A. And I believe there are five Mirando sand wells.

Q. Of two to three million each a day?

A. Yes, sir.

Q. That is your company?

A. Yes.

Q. Now, what is the open flow of the other companies?

A. I don't know.

A. Operating in that area?

A. I don't know, Mr. Bobbitt.

Q. You haven't checked that?

[fol. 467] A. No, sir.

Q. Do you know what the Houston Oil Company is taking per day out of that Carolina-Tex. field?

A. Not definitely, no. So far as I know, they are not taking any appreciable amount.

Q. Approximately?

A. I don't think they are taking a great deal more than we are taking, as far as that is concerned. That is my information.

Q. You haven't made any check on it?

A. No, sir.

Q. You don't know as a matter of fact that they are taking an average of ten million cubic feet a day?

A. I don't know; I don't think they are.

Q. Have you any information about the adjoining gas fields in the Carolina-Tex. area?

A. What?

Q. The Bruni field and other fields in that immediate area there?

A. Not specifically; just generally, is all.

Q. What is the open flow of the wells in the Bruni field—natural gas?

A. Well, the wells vary between rather wide limits.

Q. Well, what are the highest and what are the lowest, if you recall?

A. Are you talking about the Cole Bruni field?

Q. Yes. Take them one at a time, if you will, Mr. Abernathy.

A. As I say, the open flow on those wells is variable; I [fol. 468] don't remember any specific wells, but I think they vary all the way from zero up to possibly twenty million or something like that.

Q. Per well?

A. Yes, sir.

Q. And how many wells?

A. I don't know.

Q. Quite a number of them?

A. Yes, there is quite a few of them.

Q. Have you any information, Mr. Abernathy, as to the amount of gas being taken by Southern Gas Company per day out of that field and through the pipe line to San Antonio?

A. Out of which field?

Q. Out of the Carolina-Tex. field through this twelve inch pipe line.

A. Through the twelve inch line?

Q. Yes.

Mr. Coates: That isn't the Carolina.

A. That is out of the Bruni field.

Q. It is connected up with the Carolina-Tex. field?

A. There is no gas taken from there to San Antonio.

Q. Well, do you know the volume taken through the San Antonio transmission line per day?

A. It is a variable quantity. I think through that line it runs about seven or eight million a day.

Q. Your company owns that line?

[fol. 469] A. Yes, sir.

Q. Do you know about this other line, this fourteen inch line to San Antonio?

A. What about it?

Q. Do you know the volume of gas being taken per day?

A. Well, it varies from day to day and month to month.

Q. Approximately?

A. Possibly an average—oh, twelve or fourteen million or something like that.

Q. Your company owns that line?

A. Yes, sir.

Q. Now, this map does not show the Houston Oil Company's line?

A. No, sir.

Q. It runs from the Carolina-Tex. field to Houston?

A. Well, it is connected with several fields.

Q. Well, the main source of supply is the Carolina-Tex. field?

A. I don't think so. Their compressor station is located over here (indicating on map), and they have a branch line to the Carolina-Tex. field. Whether they are taking any gas out of there now or not I am not certain.

Q. Now, this contract, Mr. Abernathy, with those two concerns, South Texas Gas Company and Southern Gas Company,—this six cent contract.

A. Yes, sir.

Q. Have you made any contracts, or has the company for which you are Superintendent of Transportation made any

[fol. 470] other such contracts with outside or independent parties?

A. No, I don't recall that we have.

Q. That is the only contract that you know of that is in existence of that type and character in this area, isn't it?

A. I believe it is the only one that I know of; that is, there is not any other that I know of.

Q. Now, how many three cent contracts have you got in the Jennings area that you know of?

A. We haven't any in the Jennings area.

Q. Well, the Fansler field that you testified about?

A. I don't know exactly how many.

Q. Approximately?

A. There are several of those.

Q. Approximately how many?

A. Some five or six.

Q. Those are for two years?

A. All except the Fansler contract, yes.

Q. How long is the Fansler contract?

A. I believe it is for the life of the lease, but I am not certain about that; I think that is correct.

Q. Well, the contract will speak for itself.

A. Yes, sir.

Q. I believe we will see that contract. Now, refer to Jim Hogg Junction there.

A. Yes.

Q. At that point you furnish and deliver gas to the Rio [fol. 471] Grande Valley line, do you not?

A. Yes, sir.

Q. You furnish gas and deliver it at Jim Hogg Junction?

Mr. Coates: We object to it because it is not shown to have any material bearing on any issue in the case.

The Court: It has already been testified about in the case.

Mr. Bobbitt: He didn't give the price.

The Court: No.

Q. At what price do you deliver gas to the Rio Grande Valley Gas Company at Jim Hogg Junction there?

Mr. Coates: That is objected to because it is not shown that conditions are alike and similar, that the volumes and markets are the same, that the load factors are the same, and no proper predicate is laid for the question.

The Court: I will let him answer.

Mr. Coates: Note the exception.

Q. Do you know the price your company gets for gas delivered to the Rio Grande Valley Gas Company at the Jim Hogg meter?

A. I am not certain that I do, Mr. Bobbitt.

Q. Aren't you Superintendent of Transportation of those transmission lines?

A. Yes, but that does not necessarily fall within my jurisdiction.

Q. Well, in whose jurisdiction does it fall in to know the price?

[fol. 472] A. The Industrial Department makes all such contracts.

Q. Well, who heads that department?

A. Mr. Randall is the head of that department.

Q. Does Mr. Greene or any other of the gentlemen here present know about it?

A. I can't say.

Mr. Coates: We object to that. He does not know what somebody else knows.

The Court: No. He could know, too.

Q. Are you an officer of this company as well as Superintendent of Transportation—are you an officer of the United Gas Public Service Company?

A. No.

Q. Are you an officer of any of these subsidiaries?

A. Well, what do you mean constitutes an officer?

Q. Well, Vice-President?

A. No.

Q. Or President or Secretary?

A. No, sir.

Q. Assistant Secretary?

A. No, sir.

Q. Director of any of them?

A. Yes, I am a director of Southern Gas Company.

Q. You are a director of Southern Gas Company?

A. Yes, sir.

Q. Isn't that green line there on the map called the Southern Gas Company transmission line?

A. Yes.

[fol. 473] Q. And you are a director in that?

A. Yes.

Q. And it is hooked up there to deliver gas to the Rio Grande Valley?

A. Yes, sir.

Q. And you don't know the price it gets for the gas?

Mr. Coates: We object to that.

The Court: He said he does not know.

Mr. Bobbitt: I thought I could refresh his memory, if the Court please. Do you want to stipulate on that, Mr. Coates? We don't seem to have a witness here. Are you willing to stipulate the price of gas at Jim Hogg Junction?

Mr. Coates: I am not. I don't think it is material to any issue in the case.

The Court: Go ahead, Gentlemen.

Q. Taking up these notes here of your testimony on Direct this morning, I believe you said you had been in the gas business about ten years?

A. I said directly with the gas company.

Q. How long have you been with this concern that you are now connected with?

A. It will soon be four years.

Q. It will soon be four years?

A. Yes, sir.

Q. Did you become an officer or become connected with the company in 1929?

A. No, I was not. Which company?

[fol. 474] Q. Well, United Gas Public Service Company.

A. United Gas Public Service Company was not in existence in 1929.

Q. When did it come into existence?

A. I don't know the exact date.

Q. Well, were you connected with Moody-Seagraves?

A. No, not in 1929.

Q. When did you become connected with that concern?

A. Moody-Seagraves?

Q. Yes.

A. I was not connected with Moody-Seagraves.

Q. Which company are you with?

A. I am with the United Gas Public Service Company now.

Q. You went with that company when?

A. In 1930.

Q. They were in existence, then, in 1930?

A. Well, the group that now comprises it was, yes, sir.

Q. You were an officer in the Southern Gas Company in 1929, were you not?

A. No, sir.

Q. When did you become an officer in that company?

A. Something over a year ago, I believe.

Q. You don't recall the date?

A. Not the exact date; about a year or a year and a half ago, I said.

Q. So you have been with this gas concern about four years in the gas business?

A. With this particular company.

Q. Who were you with before that time—what gas concern?

[fol. 475] A. With the Magnolia Gas Company.

Q. It is a subsidiary of the Magnolia Petroleum Company?

A. It was at that time, but is now a part of this system.

Q. United Gas Public Service Company has purchased the Magnolia Gas Company; is that it?

A. Yes, sir.

Q. When they purchased Magnolia Gas Company you came with the United Gas Public Service Company?

A. That is correct.

Q. Now, Mr. Abernathy, do you know of a contract in existence between the company of which you — a director, the Southern Gas Company, and the United Gas Public Service Company for the sale of gas at the Jim Hogg Junction—the sale of gas from Southern Gas Company to United Gas Public Service Company?

Mr. Coates: Objected to for the same reasons heretofore stated.

The Court: All right.

Mr. Coates: And having no bearing on any issue in this case.

The Court: All right.

Mr. Bobbitt: Do you sustain the objection, Your Honor?

The Court: No; I overrule the objection.

Mr. Coates: Note the exception.

Q. Do you know of that contract?

A. What is the question?

[fol. 476] Q. The contract between Southern Gas Company, of which you are a director, and United Gas Public

Service Company for the delivery of gas at Jim Hogg Junction?

A. I don't believe I know of such a contract.

Q. You don't believe you know of such a contract?

A. No.

Q. I believe you testified you are a director in the Southern Gas Company?

A. Yes, sir.

Mr. Coates: I believe he did, Mr. Bobbitt.

The Court: Go ahead, Gentlemen.

Mr. Coates: I will stipulate that with you.

Mr. Bobbitt: All right. We will stipulate a plenty.

Q. I believe you testified this morning that the supply of gas was being depleted in the Carolina-Tex. field as one of the reasons for the contract you testified about—the six cent contract?

A. I believe I said the supply that Southern Gas Company had at that time was depleting, yes.

Q. Well, you didn't mean that the potential gas supply in the area available was being depleted—you didn't mean that?

A. Well, all of the sands in sight at that time were depleting.

Q. Were depleting?

A. Yes, sir.

Q. You mean they were taking gas from them, but weren't [fol. 477] new wells being brought in in that area?

A. Well, there were some new wells brought in, yes, sir.

Q. There is a larger taking of gas in the Carolina-Tex. field now than there has ever been; isn't that true?

A. Not to my knowledge.

Q. Not to your knowledge?

A. No; I don't think it is.

Q. What about the Bruni field?—isn't there a larger taking of gas from the Bruni field than there has ever been at any time heretofore in your knowledge?

A. No, I don't know that it is true.

Q. You don't know about it. Now, you testified about the Pescadito Junction and Jennings Junction transmission line, about these hot spots along that line, this morning. I don't know that I understood just how many of those hot spots along that line, if you know?

A. Well, I don't know the exact number.

Q. You never made any personal inspection of it?

A. Only parts of it.

Q. Well, what parts did you inspect?

A. I have been over parts of the line.

Q. How is that?

A. I say, I have been over parts of the line. I have not made any actual inspection of the entire line.

Q. Well, which parts have you been on, Mr. Abernathy?

A. Well, I have been on the part of the line towards Pescadito and that area and on the southern end of the line.

Q. How far in that area at Pescadito Junction have you inspected that line for hot spots?

A. Well, I have not made any particular inspection for hot spots on it.

[fol. 478] Q. You haven't made any inspection?

A. No.

Q. You haven't been all along the line—you just saw the end of it at Pescadito and you saw the other end of it?

A. Yes.

Q. That is the extent of your inspection?

A. I said I had been on the line. I haven't inspected it for hot spots.

Q. What you testified about the hot spots along the line and this condition of the pipe is what somebody told you?

A. Well, I know the condition of the pipe, and the work that it has been necessary to do on the line from inspection reports.

Q. But you have testified that you made no personal inspection of it?

A. That is correct.

Q. There being hot spots along that line, Mr. Abernathy, and you not having made any personal inspection of that line, you don't know of your own knowledge anything about the capacity of that line to transport gas at this time, do you, of your own knowledge?

A. Yes; I know something about it.

Q. What do you know about it of your own knowledge—not what somebody told you?

A. I know we are putting gas in it, and we are taking gas out.

Q. You know you are putting gas in it, and that you are taking gas out?

A. Yes.

[fol. 479] Q. Is that all you know?

A. And transporting gas through it.

Q. And is that all you know about that line?

A. Well, I know generally the general condition of the line, yes.

Q. You don't know how much gas you are putting in that line, and how much you are taking out?

A. I don't have the exact figures before me—just approximately.

Q. What you know about it somebody has made a report to you of the gas that is being put in and the gas being taken out?

A. I haven't actually seen the gas come out of the line, if that is what you mean.

Q. Do you know what pressure that line could stand—what gas pressure, of your own knowledge?

A. You mean at what safe working pressure the line could be operated?

Q. Yes; whether it could be operated as a practical proposition—do you know what pressure?

A. At what point?

Q. At any point. It would not be any stronger than the weakest point in the line.

A. Yes; I know approximately, yes, what would be a safe pressure on the line.

Q. What is a safe pressure on that line approximately?

A. I think you could work the line up to possibly 200 to 250 pounds.

[fol. 480] Q. You could work it up to that?

A. Yes; I think so.

Q. What do you mean by working it up to that?

A. I mean it could be operated at those general pressures. It would possibly have some leaks in it that would have to be repaired.

Q. In its present condition?

A. I say there possibly would be some leaks occur that would have to be repaired—hot spots.

Q. You don't know the extent of the leaks, or how many?

A. No; that would be impossible.

Q. As far as you know, there might be several hundred?

A. No; I don't think so.

Q. Now, Mr. Abernathy, I would like to ask you about the cost of the transportation of gas for industrial purposes from the Carolina-Tex. field to the City of Laredo city gate

and to the plant of the Central Power & Light Company in Laredo. You are superintendent of transportation of the United Gas Public Service Company?

A. Uh, huh.

Mr. Coates: We object to that as repetition.

The Court: Go ahead.

Q. Take the price of gas, Mr. Abernathy, in the Carolina-Tex. field at four and five cents a thousand, as testified—take into account every element of cost that the company incurs in transporting a million cubic feet of gas per day, say, the 1st of January, 1934, from the Carolina-Tex. field to the [fol. 481] plant of the Central Power & Light Company in the City of Laredo, and tell us what it costs the company in addition to the purchase price to deliver that gas to the Central Power & Light Company.

Mr. Coates: We object. No proper predicate laid, and because the question is not capable of an intelligent answer.

The Court: The objection is overruled.

Mr. Coates: Note our exception. Are you asking him to make a computation and give it to you.

Mr. Bobbitt: I am asking his opinion and judgment.

The Court: I understood you to ask him if he knew what it cost. Read the question, Mr. Reporter.

(Thereupon, the Reporter read the last preceding question as follows: "Q. Take the price of gas, Mr. Abernathy, in the Carolina-Tex. field at four and five cents a thousand, as testified—take into account every element of cost that the company incurs in transporting a million cubic feet of gas per day, say, the 1st of January, 1934, from the Carolina-Tex. field to the plant of the Central Power & Light Company in the City of Laredo, and tell us what it costs the company in addition to the purchase price to deliver that gas to the Central Power & Light Company."

Mr. Coates: We object to it, because the proper predicate is not laid by showing that the witness knows and can make such a calculation.

The Court: The objection is overruled.

Mr. Coates: Note our exception.

[fol. 482] The Court: The question is if he knows.

A. The cost, in my opinion, per million feet, would be the cost of operating the line divided by the amount of gas passed through the line.

Q. Do you know what that would be?

A. No; I don't. It would depend on the amount of gas passing through.

Q. On the amount of gas passing that day?

A. Yes; or at any time you made the computation.

Q. We will say, Mr. Abernathy, that two million cubic feet a day was transported for other purposes, and then a million feet in addition was transported under the conditions stated, can you compute what it would cost the company?

Mr. Coates: Our same objection.

The Court: The question is, can he compute it.

Q. I believe you stated that was the method you would have to use?

A. No; because I don't have the necessary figures to compute it.

Q. Couldn't you take the two million cubic feet as transported? What other necessary figures are required for you to make that computation?

A. You would need the cost which entered into that.

Q. Do you know what that is?

A. Not offhand.

Q. Could you get that for us?

A. Well, I think that the testimony has been introduced as to the operating——

[fols. 483-578] Q. I am not asking you what has been introduced. I say can you get those figures for us that are necessary for you to compute it?

A. I think I could, yes, sir.

Q. Will you try to do that?

A. Yes.

Q. Aren't you certain that you can get the figures and make the computation for us?

A. Yes; take the operating costs, and simply divide by the figure given——

Q. And you will do that?

A. Per million feet at that particular time.

Q. Well, will you get that for us and have it tomorrow morning?

A. I am not certain I can get the figures in that time.

Q. But if you can get them you will have them tomorrow morning. I am not suggesting any unreasonable request, I think. If you can get the figures, you will do it?

A. Yes, sir.

Q. Thank you, if you will do that. I believe that is all for the present.

The Court: Gentlemen, we will take a few minutes recess.

(Thereupon a ten minutes recess was taken by the Court.)

[fol. 579] Testimony of P. McDonald Biddison

Questions by Mr. Bobbitt:

Q. Mr. Biddison, you are now employed, at this particular time, by the United Gas Public Service Company?

A. I am not. I am retained only for the specific purposes of this case.

Q. You are retained for the purpose of giving your testimony in this case?

A. Yes.

Q. And not in any other capacity?

A. That is correct.

Q. I believe you testified you opened an office in Dallas, in 1930?

A. Yes.

Q. And you still maintain that office?

A. Yes.

Q. You live, however, do you not, in Louisiana?

A. I have a home in Louisiana, but my residence now is in Dallas.

Q. Since 1930, your principal business has been testifying [fol. 580] in rate cases?

A. No, sir, it has not.

Mr. Coates: We believe, if the Court please, if this line of testimony has any purpose, it would be for impeachment, rather than testing his qualifications.

The Court: I agree with you.

Mr. Coates: And we object to it for that reason.

The Court: Sustain the objection.

Mr. Bobbitt. I don't want to ask any questions against the ruling, of course——

The Court: You may ask any questions touching his qualifications.

Q. You are not now and have not recently been employed by any gas distribution company, in the capacity of an engineer, in connection with their line of business?

A. Not directly by a distribution company since 1930, no. Indirectly, however, I am consulting engineer for all purposes to a large group of distribution properties embracing something like a quarter of a million consumers.

Q. Are you employed by the Lone Star Gas Company?

A. No, sir. I am retained by the Lone Star Gas Corporation, for consulting engineering purposes, in any capacity in which my services may be desired, by themselves or by their subsidiary or affiliated companies.

Q. But you are not engaged by any of these companies as an engineer in connection with the actual distribution or sales of gas?

[fols. 581-597] A. I am engaged, as I stated, by the Lone Star Gas Corporation for the purposes of consultation for any and all of their affiliated and subsidiary companies, for any and all purposes.

* * * * * * *

[fol. 598] A. I have no information at all as to the actual cost of these properties, from any source.

Q. That's what I asked you; you have no information at all as to what was actually paid in the construction of these properties?

A. None whatever.

Q. None whatever. Now you took what's handed to you in an Exhibit or what is told to you by someone else, and base your testimony on that, together with your experience in other properties?

A. I have not testified at all as to what these properties [fol. 599] cost and made no statement in regard thereto, except to state that I do not know what they cost.

Q. But in arriving at your conclusions here as to what you thought this going value allowance should be, you took into account the figures and costs and so on, that someone else had furnished to you?

A. As to its ratio; as to the ratio being existent between going value and construction costs, I used my own opinion and my own information. But as to the figure to which that ratio should be applied, I cited a figure of about $1,200,000.00, which is an approximation to the figures set up in the exhibits prepared and sponsored by Mr. Greene.

Q. But, as I say, you don't know anything about the accuracy of those figures at all? You took Mr. Greene's figures, that $1,200,000.00?

A. For that specific purpose, I took Mr. Greene's figures, yes.

Q. Well, that is what I am asking you. And you base your testimony or your estimate as to what in your opinion ought to be allowed as a separate item of going concern value, on a certain percentage of the cost of the property; that is true, isn't it?

A. Yes, I specifically stated ten per cent was my idea of the minimum of going concern value for a property of this sort.

Q. I believe you stated the ratio sometimes varies from ten to twenty per cent; as high sometimes as twenty per cent?

A. I have so stated, yes.

[fol. 600] Q. Isn't it true, Mr. Biddison, that in some cases there is no separate allowance for going concern value considered or allowed?

A. I believe that to be correct.

Q. Well, don't you know it to be correct?

A. Yes.

Q. It ranges then, according to your testimony, from nothing whatsoever up to as high as twenty per cent of the cost of the property?

A. No, sir; it does not. It ranges, according to my testimony, from ten to twenty per cent.

Q. Well, didn't you just say in some instances that no allowance at all is made or considered for going concern value?

A. Yes, but that——

Q. Well, then, doesn't it range from nothing or no allowance, to as high as twenty per cent?

A. No, sir; the fact that it has not been estimated in some cases or has not been allowed in some cases, is no criterion of what it may be when it exists.

Q. Well, if it does not exist, where it is not allowed, it just doesn't exist; is that right?

A. That's right.

Q. And instances where it does not of course exist, it just does not exist?

A. That's right.

Q. Yes, and you put in your opinion, and from an [fol. 601] examination of the figures given to you by other parties, it is your opinion it does exist in the Laredo properties?

A. It is my opinion that it does exist in the Laredo properties.

Q. In your opinion, to the extent of ten percent?

A. Yes—minimum.

Q. And that is based upon, as I believe if I understood you correctly, upon the continuous, general use of the commodity—gas, in this instance; is that correct?

A. Among other things, yes.

Q. That is one of the main features?

A. That is one of them, yes.

Q. What do you mean by continuous, general use?

A. Well, it has been in use down there in Laredo since along about 1910, and it is in use down there now; and it is in quite general use as shown by the relative number of meters as compared to the population and it is in quite general use as shown by the comparison of gas meters to water meters.

Q. Well, if the company would cease furnishing gas and go out of the gas business, and if its property is still there, there would be no continuous, general use, so far as that company is concerned, of the commodity, would there?

A. I presume not.

Q. And there would not be any going concern value inhering in that particular property, would there?

A. Not if they abandoned service, I don't think there would be.

Q. And if the company did not hold a franchise, for instance——

[fol. 602] Mr. Coates: Now just a minute; I want to make an objection to that line of questioning.

(Jury was excused during discussion of the objection.)

Mr. Coates: We object to this question and to any line of questioning seeking to elicit from this witness any information predicated upon the proposition of the expiration of franchise or seeking to get, by inference and innuendo, before this jury, the fact that the gas franchise of the company in Laredo has expired, for the following reasons: First, because such testimony is incompetent and prejudicial testimony in this case, and second because it has no material bear-

ing on any issue made in this suit, which is one brought by the plaintiffs here to force this company to continue to render its service at the rate prescribed by the Commission.

Now then, here is our view of the law with respect to that point.

The Court: Mr. Coates, if I am wrong in my ruling, I think I would be wrong day after tomorrow, because I have my own views about this matter, regardless of what this witness or any other witness may say about it. The objection will be overruled.

Mr. Coates: Will you hear from me for about two minutes?

The Court: Yes, and longer than that if you like.

Mr. Coates: I say, and I can bring you sufficient authorities, and abundant authorities to bear me out in this if the court desires, that the courts have specifically held, in [fol. 603] determining the existence of, or the measure of or amount of going concern value, that neither franchise value, franchise, good will or any of those things may be taken into account. I think it has been further held and specifically held in the Denver water case, which is in either 244 or 246 U. S. that in a case relating to the reasonableness of rates prescribed by a regulatory body, that the value of the property on which those rates are based, in any action brought to compel continued service at those rates—the fact that the franchise has expired and that they have no franchise, can not be used to depress any element of value used as a basis of value for the fixing of the reasonableness of the rates at which they are seeking them to continue to serve, and for this practical reason: A governmental authority cannot on the one hand withhold from the company that which gives it the right for a stated time in the future to continue to furnish service, and on the other hand, by withholding this right, depress the value of the property upon which the rates are based and at which rates it compels this company to serve. Where they are seeking to enforce a rate by this character of action, by their action and by such consent, they give this company the right to continue to serve, and you can not make rates compensatory which would otherwise be confiscatory by withholding from them the franchise, and thereby depressing the value of the property. Have I made myself clear on that?

The Court: Yes, I understand you, and I can agree with [fol. 604] you fully and still maintain the position I have taken in this matter. The objection will be overruled.

Mr. Coates: Note our exception to the ruling of the Court.

(The jury returned to the jury box.)

Q. If the company did not or does not hold a franchise, authorizing it to continue the business and the general use of gas and gas service, there would not be any element of going concern value inhering in that particular property; isn't that true?

A. There would be, if the other requirements which establish going concern value were not voided for other reasons. I do not hold, or do not believe that the holding of a franchise or a failure to hold a franchise establishes or disproves the existence of going concern value; it may modify the amount of going concern value.

Q. Mr. Biddison, I believe you testified before the adjournment for lunch, that under the item of general expense, taking the figures from the exhibit there, that you testified from, that it showed that 18 percent had been allowed for general expense?

Mr. Coates: I believe he said general construction expenditures, Mr. Bobbitt.

The Court: Well, the witness will correct him.

A. Slightly under that, Mr. Bobbitt.

Q. And I believe you said you considered that very reasonable?

A. Yes.

Q. And I believe you testified that often these items were [fol. 605] greater than that, running as high as twenty or twenty-five percent?

A. Yes.

Q. Isn't that in the case, Mr. Biddison, of the organization of companies or establishments that pay high promotion fees and high salaries in the organization of such concerns?

A. Not necessarily so.

Q. Not necessarily so, but often so, isn't it?

A. It may be in the case of those companies or in the case of companies which have not indulged in those practices.

Q. I believe you said you never made any inspection or investigation of these Laredo properties?

A. Not to make an inspection to determine their condi-

tion; however, I have seen the properties, of course, but not to make a report on the condition of the property.

Q. You made some investigation; I understand that, but you made no investigation or made no report on any of the properties?

A. No reports.

Q. Then how do you know that the present percent condition of the properties to which you testified reflects the correct percent condition of the properties?

A. I did not make any statement in regard to its condition.

Q. Didn't you testify as to what the percent condition of these properties was in your opinion?

A. No sir, I did not.

Q. Then you have no opinion on that point at all?

A. Yes, I have.

[fol. 606] Q. What is it based on?

A. It is based upon testimony that has been given or information I have had, and I think it was brought out in the testimony, although I am not sure of it, as to the amount of unaccounted for gas, very largely, and in addition, as the results of inspection of a large number of other operating properties.

Q. You could not tell the actual condition of these properties here by inspecting properties in North Texas or up in Kansas, could you?

A. No, and I have made no statement on it, either.

Q. And you do not know of your own knowledge anything about the percent condition of the physical properties involved here?

A. No. I have an opinion on it.

Q. Yes, and I asked you what it was based on—what that opinion was based on.

A. And I answered the question.

Q. Well, will you answer it again?

A. Yes, it is based upon the relative amount of unaccounted for gas in the system, and upon the condition in which I quite often find similar properties upon inspection, and I have inspected a large number of other properties.

Q. And so you are basing it now, upon testimony as to the unaccounted for gas. Now then, do you recall any testimony in this case, and you have been here for a good little bit, any testimony in this case about the item of unaccounted for gas?

A. I think it was testimony. I said that I think it was [fol. 607-617] testimony but I am not sure whether it was testimony or merely information.

Q. What kind of information was it?

A. Information as to the amount of unaccounted for gas per mile of three inch equivalent line.

Q. Was there any testimony here about that?

A. I am not sure it was testimony, or whether it came to me through other sources of information.

Q. Other sources of information?

A. That's right.

Q. I don't know about—I don't want to take up too much time about this, but you are not certain whether that was testimony or whether you got the information from some outside source about it?

A. That is still correct.

Q. That is still correct, yes. But your information as to the percent condition comes from some information from some source about the amount of unaccounted for gas?

A. Yes.

Q. And that is the basis of it?

A. And, as I stated, in addition, the result of inspection on a large number of other similar properties.

Q. How do you know that the character of the soil and the age of the pipe and so forth was the same in these other properties as in the Laredo properties?

* * * * * * *

[fol. 618] Questions by Mr. Fitzhugh:

Q. Mr. Biddison, in Exhibit 9, which I believe you say you checked,—do you find the costs included in that exhibit for [fol. 619] removing or relaying paving, in connection with the reconstruction cost new appraisal or estimate?

The Court: I thought the questions would be directed to going concern value.

Mr. Fitzhugh: I will bring that in, if the Court please.

The Court: Mr. Fitzhugh, if you know where that is in the exhibit, direct his attention to the page.

Mr. Fitzhugh: Your Honor, I don't think there is any in there. I just want him to verify that fact.

A. No, I think there is nothing in there under that heading.

Mr. Coates: If you are asking for that information, I think I can give it to you.

Mr. Fitzhugh: I am just asking the witness.

Q. What is your conclusion on that point, Mr. Biddison,—if there is or is not?

A. That there is not any allowance for paving.

Q. Now, it is a fact, is it not, Mr. Biddison, that the main streets in the business section of Laredo and the streets in the better residential sections of the city of the present time are all paved?

A. A great number are paved.

Q. Yes, sir, and in order to lay in a system in the streets of Laredo at this time, if the property were being reconstructed as of this date, it would be necessary to take up [fol. 620] paving and relay it——

A. Yes, sir.

Q. — after the lines had been put in,—isn't that true?

A. That is correct.

Q. How do you account, Mr. Biddison, for the fact, then, that they left out the cost of removing and relaying pavement in the reconstruction cost appraisal as submitted by the Company?

A. I don't know that I can thoroughly account for that. I know of reasons why it may have been done, but I am not certain that they are the reasons why it was done.

Q. Don't you know, Mr. Biddison, that they had to be left out in line with the United States Supreme Court's decision, because such costs have not been historically incurred in the building of the Company's plant?

A. No, I don't know any such thing. On the contrary, there is a rather arbitrary rule adopted in reproduction estimates, based upon a decision of the United States Supreme Court, by which it is customary to include in the reproduction cost estimate the cost of replacing such paving as was historically removed and replaced.

Q. It is your opinion then is it, Mr. Biddison, that the appraisal as submitted by the Company should be increased by the amount of paving which actually, as a matter of historical fact, was taken up and relaid in the building of [fol. 621] the Company's properties?

A. I think the estimate could well be increased by that amount, yes, sir.

Q. And in line with the facts as they actually occurred, historically?

A. Yes, sir.

Q. Now, if you are willing to consider the history of the Company in that respect, Mr. Biddison, shouldn't you be equally as willing to consider the history of the Company with respect to going value?

A. No, I am only willing to follow the rule which I stated in valuation with respect to paving over mains, because that rule has resulted from a decision of the United States Supreme Court.

Q. Well, I am speaking now simply of the pure and simple logic of the situation. Is there any reason why you should consider in one item of property the historical facts as they actually occurred, and absolutely disregard them for all purposes in regard to some other kind of property?

A. Yes; the difference is in one case we have a decision of the United States Supreme Court by which we are bound to be guided; in the other we have no such decision.

Q. Well, leaving aside for the moment the consideration of the court decisions on the matter,—is there any reason in [fol. 622] logic, as you can see it, why there should be that distinction in the two ways of proceeding?

A. No, as a matter of logic it is my idea that the history in a reproduction estimate should be disregarded in both cases.

Q. At least in your remarks about going value you do not intend to have it understood that you have considered in any way the history of the Company and its past experiences, in finding that amount?

The Court: Gentlemen, I believe this witness has at least three times recited to you the elements upon which he fixes going value,—absolutely named them over and over. So why ask him again?

Mr. Fitzhugh: All right.

Q. Now, Mr. Biddison, do you know how the Company keeps its books?

A. Only from what has been testified here.

Q. Do you know whether the Company charges the cost of attaching customers, if there are any such costs, as an operating expense or as a capital expenditure?

A. I don't know.

Q. Don't you know, as a matter of fact, Mr. Biddison, that none of the costs in connection with the training of personnel, acquiring of new business, acquiring new customers, ac-

quiring the operating records of the Company, or any of the costs that are ordinarily considered as entering into or [fol. 623] making up going value, have not been capitalized on the books of the Company?

A. I don't know anything about what has been capitalized on the books of the Company.

Q. Now, granting for the moment, Mr. Biddison, that none of those costs have been capitalized, and assume that to be a fact, would that make any difference whatsoever in your estimate of the allowance to be made for going value?

A. None in the world. I conceive that if a going value exists it is the property of the Company, no matter how acquired. A possession of mine has a value not fixed by the method by which I obtained the possession, but by what it would cost me to replace the possession; and if that possession be taken away from me by some superior force I am robbed; no matter whether that possession came to me as the result of my own handiwork, by purchase, by gift, or by inheritance—it is mine.

Q. But suppose the gas consumers, Mr. Biddison, have been paying as part of their operating expenses covered by the rate on through the years the cost of building up all of this going value, do you think that it would be in any way prejudicial to the Company to now exclude that value from the rate base?

Mr. Coates: The same objection we made a while ago is made ——

The Court: That is the same question asked by Mr. Bob- [fol. 624] bitt a while ago, and when I sustained the objection he withdraw it?

Q. Now, I believe you accepted the figures as testified to by Mr. Stein for the number of customers?

A. Yes, sir.

Q. What was that figure, four thousand five hundred and something, was it not?

Mr. Bobbitt: About forty-eight hundred.

A. Gas meters as of January 1st, 1934, in Laredo, 4775.

Q. Now, suppose, Mr. Biddison, that instead of the number being exactly that, that it had been reduced by exactly one thousand customers, what difference would it have made in the amount you found as the going value?

A. I don't know; I would have to make a calculation on that to determine it.

Q. Would it have had any effect at all?

A. Yes, I think it would.

Q. It would have reduced your allowance for going value, wouldn't it?

A. Yes.

Q. But you couldn't say what amount?

A. No.

Q. Now, suppose, Mr. Biddison, that the Company should decide to-day to move Mr. Stein, who is now the manager of the Laredo plant, and, say, all the personnel in the office of [fol. 625] the Company at Laredo, to some other location on the Company's line, and say that the new personnel incoming, to run the operations in the city of Laredo, would be inexperienced,—what difference would there be in the going value as of this date that you would find for the Laredo system?

A. It would make some difference in the going value, if you are starting off with a new and inexperienced organization. I can't give it to you in figures.

Q. Well, as a capable measurement.

A. Well, I don't think that it is capable of definite determination in dollars.

Q. Well, I don't think that it is capable of definite determination in dollars.

Q. All of these things are rather indefinite, aren't they, Mr. Biddison?

A. You can make an approximation to it. In general, it costs you from twenty-five to seventy-five per cent of an annual payroll to properly train and coordinate a group of employes in new duties.

Q. Is the fact that the Company has at Laredo operating records and accounting records an item which enters into going value?

A. Yes, it is an item that proves the existence of a going value.

Q. Now, suppose the Company had not as of this date those records, what difference would you make in your per [fols. 626-631] cent figure for an allowance to going value at Laredo?

A. I don't know; it might make some very slight difference, but it would be very small.

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[fol. 632] Testimony of A. W. GREENE

Recross-examination.

Questions by Mr. Lange:

Q. Mr. Greene, you prepared the Exhibit marked Defendant's Exhibit 9—inventory and appraisal of this Laredo property?

A. Yes, sir; it was prepared under my supervision.

Q. Under your supervision?

A. Yes.

Q. What amount of time was devoted by you in the Laredo area in preparing that exhibit?

A. I was down there possibly three or four days during the preparation of the original inventory, and have been on the property a great many times since.

Q. Did you, in preparing this inventory and appraisal, make any changes as far as the pricing out of various items from that which you filed in the hearing before the Railroad Commission?

A. There are some minor changes.

[fols. 633-642] Q. Are there very many of them that you can point to?

A. No, sir; there are not very many, and those that are—the changes that have been made are slight in the pricing.

Q. Are the changes very many in the totals?

A. No, sir; except that the total that appears on the summary sheet has incorporated in it the changes that we made in the exhibit near the close of the Laredo hearing.

Q. And this appraisal, of course, is based on the reproduction cost new method, and of course, has no bearing or connection with any historical cost of the property?

A. No, sir.

* * * * * * *

[fol. 643] Q. Mr. Greene, in your transmission part of the appraisal, I believe you stated that you included in that [fol. 644] appraisal this line marked Mirando City—Oilton line, beginning at Aguilares, in a southwesterly direction to Mirando City and Oilton?

A. Yes.

Q. Does any gas flow through that line from Oilton or from Mirando City toward Laredo?

A. There is none flowing at this time from Mirando City or Oilton toward Laredo.

Q. Did any flow through that line toward Laredo last year?

A. No, sir; not for several years.

Q. Not for several years?

A. No, sir.

Q. Where does that line appear in your transmission part of the appraisal?

A. It appears in the section beginning on page 84. The section begins on page 84 but it is on page 91.

Q. Aguilares to Oilton—the total depreciation, the depreciated cost of that, according to your appraisal, is $36,439.00?

A. That is correct.

Q. What part of that—or is all of that charged to the Laredo area?

A. No sir; on the basis of this appraisal about 70 percent is charged to Laredo.

Q. 70 percent of the $36,000.00.

A. 71.29 percent was charged to Laredo.

Q. Now, does your appraisal give the gas wells connected to the gathering system in the—where is the gather-
[fol. 645] ing system that you have in your appraisal located?

A. Near the junction of the Pescadito-Jennings line, and the Bruni to Roma line.

Q. In other words, it is in a northwesterly direction of the Jennings Junction?

A. It is in a northwesterly direction, and in Exhibit No. 9 we have also included the lines in a southeasterly direction.

Q. Those that are southeast of the Jennings Junction?

A. Both of them, yes.

Q. Now, where is the first—the one that is Northwest of the Jennings Junction—where does that appear in that exhibit?

A. The section begins on page 19, and the lines are detailed following that.

Q. Now, the total appearing at the bottom of page 19 is $10,495.00 and that is the total charged to Laredo, isn't it?

A. That is the total that is charged to the Laredo sector; 71.29 percent of that is charged to within the city of Laredo.

Q. And why is the other part not charged to Laredo.

A. The remaining percentage has been allocated out on an M. C. F. basis of the gas deliveries within the Laredo city gate.

Q. What percent, if any, has been allocated to the Roma line?

A. 70 percent of the total valuation of the gathering lines in that area.

Q. Now then, can you give us the wells attached to that gathering line in the West Jennings, the one we just spoke of?

A. Mr. Lange, I haven't got those wells at this time.

[fol. 646] Q. Can you get those lines?

A. I have the amount of pipe in here, but I do not have the names of the wells.

Q. In your former appraisals, did you have the wells listed?

A. I did. I did not have them listed, but I gave them to you off a map I had.

Q. You do not have that map available?

A. Not right at this moment, no sir.

Q. But you can get it?

A. Yes.

Q. I will ask you at this time, is Jennings No. 10 attached to that gathering system?

A. Jennings No. 10 is attached directly in to the main line, and is not included in Exhibit No. 9.

Q. Where is that well attached, with reference to the lines on this map.

A. It is north and west of the junction between the Jennings-Pescadito line and the Bruni-Roma line.

Q. That is the line running in a northeasterly direction from Jennings Junction on this Map No. 2?

A. Yes.

Q. Checkered——

A. No sir; it is running northwest from Jennings Junction, the Pescadito-Jennings line.

Q. I wanted to mark on the map exactly.

A. Mr. Lange, I cannot spot that exactly but it is in the [fol. 647] vicinity of this area right there.

Q. Is it east about half an inch of the figure marked 12 on this map 2, approximately?

A. Approximately, yes.

Q. You say it is connected directly with the Jennings-Pescadito line?

A. Yes.

Q. It is not connected with any gathering line?

A. No, sir; it is tied directly into the Jennings line.

Q. That is a company owned well, isn't it, Mr. Greene?

A. Yes.

Q. Do you know the amount of gas taken out of that well last year?

A. No, I do not.

Q. Or the 12 months ended December 31, 1933?

A. No, sir I do not.

Q. Who would have that information.

Mr. Coates: Mr. Lange, I think Mr. Womack has already given you those volumes, hasn't he?

Q. He has given us the volumes, yes, but not the price. Do you know what the price of that gas was, that flowed to Laredo out of that well?

A. No, sir, I do not. That is our own production, and I don't think any price has been assigned to it.

Q. Do you know how much of that gas flowed towards Roma?

A. No, I don't, Mr. Lange.

Q. Mr. Greene, turning to your transmission section again, [fol. 648] where does the portion of the transmission line known as the Jennings-Pescadito line, appear?

A. On page 94 of Exhibit 9.

Q. Is that the beginning or is that the total; where is the total reflected of that section of the line?

A. On page 94.

Q. $168,699.00?

A. The total is on page 95.

Q. Yes, and that is $169,528.00—that is the total depreciated cost?

A. Yes, that is correct.

Q. And the amount allocated to Laredo is $153,485.00?

A. Yes.

Q. Now, with reference to this map No. 2 Mr. Greene, is that the line appearing on this map from the point Marked 2, extending southeast to the point marked 3 on this map, for a total of 26.68 miles?

A. Yes, that is correct.

Q. Of six inch pipe. Mr. Greene, how did you arrive at the present percent condition of that line, to give it a percent

condition of 85 and 86; that's what you give it, don't you—take the lines as they appear on page 94?

A. Yes.

Q. How did you arrive at that percent condition?

A. By inspections at one mile intervals along the entire length of the line.

[fol. 649] Q. Were those the inspections that you made with Mr. McGary?

A. Yes.

Q. And as were testified to before the Railroad Commission?

A. Yes.

Q. When were those inspections made—over what period of time, Mr. Greene, if you know?

A. I believe they were made in March, 1932.

Q. Just exactly how did you go about making those inspections?

A. The inspections were made at each mile post.

Q. At each mile post?

A. Yes.

Q. And what was done at the inspection point?

A. There was a hole dug out to uncover the pipe and get beneath the pipe, and the coating was inspected and scraped off, and the pits, if any, were measured with a pit micrometer.

Q. And after you had made your total inspections, you would give each of those mile posts a percent condition; is that it?

A. Yes, at each mile we would write the percent condition at that point.

Q. Now, what part of this line has been reconditioned or what part has been taken out since the time you made that inspection?

A. There has been approximately 40,000 feet of it, I believe sir.

Q. Exactly what is done when pipe is reconditioned?

A. It is removed from the ditch and cleaned, first by removing the coating and then by sand blasting, and the pipe was then primed and relaid or restrung and welded and coated.

[fol. 650] Q. How many sections or how many feet of pipe were taken out that were not replaced?

A. I would not be able to answer that.

Q. Approximately?

A. I don't know.

Q. You don't know.

A. No, sir.

Q. Well, who would be able to give us those figures, the approximate number of feet of pipe that were taken out of that line during that reconditioning period, and not put back?

A. I think I could get that information.

Q. Will you please get it?

A. Yes.

Q. Since the time that you and Mr. McGary made an inspection of that line, Mr. Greene, you have not had occasion to see it any more?

A. Yes, I have been on the line since that time.

Q. When was that—since your reconditioning of it?

A. The last time I was down there was about November, 1933.

Q. Was that after they had finished this reconditioning work that they had been doing?

A. Yes, the reconditioning work was completed at that time.

Q. Do you know the amount of gas that has been transported thru that line during the calendar year ending December 31, 1933, towards the Laredo area?

A. No, I do not know the quantity.

[fol. 651] Q. Do you know what pressure that line would stand, taking gas delivered to Laredo?

A. No, I would not know that offhand. Mr. Abernathy testified he could operate it at 240 to 250 pounds, I believe.

Q. 240 or '50 pounds pressure?

A. Yes, I believe so.

Q. Whether or not a transmission line will practically carry gas depends after all on the amount of pressure and not the amount that flows through?

A. How is that.

Q. As to whether or not a transmission line will serve practically, depends on the amount of the pressure put on the line, and not on the amount that passes through; isn't that correct?

A. The amount of pressure usually governs the amount that flows through.

Q. And Mr. Abernathy stated it would stand 200 to 250 pounds pressure; isn't that correct?

A. I think he said 240 to 250.

Q. When you had occasion to see this line last November, did you notice any leaks in the line?

A. No, I did not.

Q. And when you and Mr. McCary made that inspection of which you just spoke, you just were making an inspection at each mile post?

A. That is correct.

Q. You did not attempt to notice the condition of the line [fol. 652] at any other point?

A. Yes, we looked at the line all the way along, at places where we could, except that we only made notes or recorded our notes at the mile posts.

Q. At the mile post, and you would give each mile post a certain percent condition?

A. That is correct.

Q. Do you know how often, if at all, that Pescadito-Jennings Line was used during the twelve months period ending July 31, 1932?

A. No, I wouldn't know that.

Q. In transporting gas toward the Laredo area?

A. No, sir.

Q. Or in the 12 months ending December 31, 1933?

A. No, I wouldn't know that either.

Q. Or in the year 1930 or 1931?

A. No, sir.

Q. Mr. Greene, is there a Mr. Worsley connected with the United Gas System as an engineer?

A. Yes.

Q. What are his initials?

A. J. E.

Q. Mr. J. E. Worsley?

A. Yes.

Q. Isn't it a fact that he made an appraisal of these properties about the year 1929 or 1930 for the company?

A. Not to my knowledge, Mr. Lange. I don't believe he [fol. 653] did. He might have made some sort of a horse-back appraisal on it.

Q. What do you mean by a horse-back appraisal.

A. I mean one where you don't go out and get an inventory and just where estimating is done by rule of thumb. I don't know whether he did or not, but I am positive he did not make an actual appraisal and inventory of the system.

Q. What was the extent of his appraisal?

A. I don't know.

Q. You just stated he made a horse-back appraisal.

A. I said if he made one it was a horse-back appraisal, but I am not familiar with any appraisal he ever made of the line.

Q. Did you ever see one he made?

A. No, sir; I have not.

Q. Is he still in the employ of the company?

A. He is, yes.

Q. What is his capacity?

A. He is an engineer.

Q. What has been his experience in valuation work?

A. I think he has had a lot of experience in valuation work.

Q. Now, the first appraisal that you filed in the hearing before the Railroad Commission, Mr. Greene; I believe at that time you stated that through error you included a gathering system in the Carolina-Texas field?

A. Well, I don't know, sir.

Q. I mean when you filed your first appraisal, you subsequently filed a correction sheet, taking out that gathering [fol. 654] line; is that not a fact?

A. No, I don't believe so. I do not recall that.

Q. What gathering system did you eliminate from your appraisal?

A. As I recall, our correction sheet there, we eliminated a part of the gathering system in the Jennings field.

Q. In the Jennings field?

A. Yes.

Q. It had not included any part of any gathering system in the Carolina-Texas field?

A. I believe not—I am pretty sure about that.

[fol. 655] Q. Which did you eliminate, the West or the East Jennings?

A. No; we allocated part of it out.

Q. You are referring to your present appraisal?

A. I am referring to this Exhibit No. 9, and the correction we made at Laredo.

Q. Now, let me get it straight. The correction that you made in the Exhibit 9 affected what gathering system?

A. The Jennings.

Q. East Jennings or the West?

A. All of those Jennings.

Q. All of the Jennings?

A. Yes, sir.

Q. Now, what was the correction that you made in the appraisal that you filed before the Railroad Commission?

A. I don't know if I understand you full here, Mr. Lange. Near the close of the Laredo hearing we made an exhibit deducting part of the Jennings lines from the appraisal, because of allocation; and in this Exhibit 9 that we are now presenting we have included that in the Exhibit—that is, we no longer have that face sheet showing the deductions.

Q. Then that covers the same properties that you corrected in the appraisal—the extra sheet that you filed in the appraisal before the Railroad Commission?

A. This Exhibit No. 9 is practically exactly the exhibit we filed before the Railroad Commission with the face sheet [fols. 656-688] which corrected the Jennings gathering system.

Mr. Coates: That is, you made your correction in the Exhibit rather than in a correction sheet this time?

A. Yes, sir; that is correct.

Q. And does that affect the same property items?

A. Yes, sir.

Q. Now, where is that transmission line on which Mr. Womack charges the proportionate rental to the Laredo area, where is that situated with reference to that map?

A. From the Jim Hogg Field to the Jennings Junction.

Q. That would be in a northeasterly direction from the Jennings Junction towards Jim Hogg?

A. That is right, yes, sir.

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[fol. 689] Testimony of H. L. Dickerson

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Cross-examination.

Questions by Mr. Bobbitt:

Q. Now, these services you refer to that the Electric Bond and Share Company furnishes gas lines and that you have testified about—where is the office of the Electric Bond and Share Company?

A. Two Rector Street, New York.

Q. Where?

A. Two Rector Street, New York.

Q. Two Rector Street, New York.

A. Yes, sir.

Q. Who is President of Electric Bond and Share Company?

A. Mr. C. E. Groesbeck.

[fol. 690] Q. And how many Vice-Presidents have you in the concern?

A. I think there are five.

Q. Five. And how many other general officers of Electric Bond and Share Company?

A. By "general officers" what do you mean—corporate officers?

Q. Yes, sir.

A. A Treasurer and a Secretary.

Q. You have testified as to the value of this special service rendered to this concern and the cost thereof, and by deduction there is fifteen per cent profit. Will you tell us what is the salary of the President of Electric Bond and Share Company?

Mr. Coates: We object to it. I don't see any relevancy for the over-all cost. If the service is worth its value——

The Court: Mr. Coates, I tried to keep you out of that. You insisted, and they have a right to go into the elements of it.

Mr. Coates: I think it is perfectly admissible to go into the character of the services and the valuable character of the service and show that the cost of rendering it is in keeping with the amount paid for it, but if the over-all cost is not out of line I fail to see the relevancy and materiality.

The Court: The objection is overruled.

Mr. Coates: Note the exception.

[fol. 691] What salary does the President of Electric Bond and Share Company receive?

A. I don't know. I saw by the papers a week or so ago some figure——

Q. Well, we are not trying the case by what you see in the papers.

A. I don't know.

Q. You are employed by the Electric Bond and Share Company?

A. Yes, by the President. He knows what I get, but I don't know what he gets.

Q. You work out of the New York office?

A. Yes, sir.

Q. You don't know what the President of Electric Bond and Share Company gets in salary?

A. I do not.

Q. Have you any idea?

A. I have not.

Q. What salary does the First Vice-President of Electric Bond and Share Company receive?

A. I don't know.

Q. Or what any of the other Vice-Presidents receive?

A. I don't know.

Q. You don't have any idea what the payroll and salaries are of the concern that is furnishing this service?

A. I know what the payroll is by departments, but not by individuals.

Q. Well, what is the payroll of the Executive Department of Electric Bond and Share Company?

[fol. 692] A. I haven't that figure here, but I can secure it.

Q. Will you do that?

A. Yes, sir.

Q. You can find that out without any trouble?

A. Yes; I have it in my papers.

Q. And the salaries of each of the Vice-Presidents?

A. No, sir, I can't. There is only one person, outside of the persons who receive that figure, that knows. That is the Controller of the company.

Q. What does the Controller get?

A. I don't know.

Q. Nothing secret about the salaries paid its officers, is there, Mr. Dickerson?

A. I think not. As I said, I saw it in the papers the other day.

Q. Well, what were the figures?

A. They were figures for 1932 and 1933. My recollection is that Mr. Groesbeck got seventy-seven thousand dollars.

Q. Who is that?

A. Mr. Groesbeck. He got that at that time. I don't know what he gets now.

Q. What do these others get?

A. From a hundred thousand down to sixty-five thousand a year.

Q. From a hundred thousand to sixty-five thousand salary a year?

A. Yes, sir. That was shown in the papers. There were [fol. 693] comparatively few of them.

The Court: Mr. Coates, do you object to what he saw in the newspapers?

Mr. Coates: Yes, sir, and I move that it be stricken out as hearsay.

The Court: I was uncertain whether you objected to all of it.

Mr. Bobbitt: Well, he said he can get it.

Mr. Coates: No, he didn't say he can get it.

The Court: Gentlemen of the Jury, you will not consider for any purpose what the witness said he saw in the newspapers, about salaries or anything else.

Q. But you will endeavor to acquire the information from the proper records of the company?

A. Yes, sir.

Q. And it is the concern furnishing this service you testified about?

A. It is.

Q. Giving service in the utmost detail you have testified about?

A. It is.

Q. How many sponsors—I believe you called them sponsors—how many sponsors operate down at Laredo in helping the local officers run that concern?

A. There is an operating sponsor, an engineering sponsor, a rate sponsor, an accounting sponsor, and a representative of the Commercial Department.

Q. He is a sponsor, isn't he?

[fol. 694] A. Well, he is not so designated. There is no individual man assigned to these properties. In the other companies there is a man assigned to the United Gas Public Service Company properties.

Q. Now, give us the other sponsors.

A. A representative of the Tax Department, legal representatives——

Q. Are they sponsors?

A. They are not so designated, because they are not assigned to one property or one group of properties; all follow

the routine operations of these properties accounting to Laredo and all make periodic visits to the properties, including Laredo.

Q. Now, can you without too much detail tell us how many sponsors operate down there—what is the total number of sponsors and representatives that furnish the service you testified about—the total number?

A. The organization consists of some seven hundred people.

Q. You don't send seven hundred people down there, do you?

A. The number of people who make periodic visits to the properties, representing different departments, is probably ten or twelve.

Q. Mr. Dickerson, what do you pay these sponsors?

A. I have no individual payroll figures.

Q. Well, can you tell us approximately?

A. No. I can by departments, but not by individuals.

Q. They draw good salaries?

[fol. 695] A. I can tell what the engineering total payroll is and what the commercial department is.

Q. I am talking about the individuals that furnish this service.

A. I have no information as to what any individual gets in the way of salary.

Q. Now, you have told us a good deal of detail about what they do?

A. Yes, sir.

Q. And it is in the record, of course, and there isn't much left for the local officers to do after those sponsors get through?

A. Considerable.

Q. But every policy and every action down there that amounts to anything in connection with the management and operation of these properties to furnish gas to the people who use it is directed and sponsored by Electric Bond and Share Company?

A. It is not directed by Electric Bond and Share Company.

Q. Well, what do you call the service you have just testified about?

A. The service is for facilitating the operations. Specifically, the accounting processes of the Texas Border Gas

Company today as compared to three years ago are quite different.

Q. They don't direct it; they just facilitate it?

A. They consult, advise and assist the operating officials.

[fol. 696] Q. Yes, sir. Now, Mr. Dickerson, when did this Electric Bond and Share Company service begin with these particular properties at Laredo?

A. January first, 1931.

Q. January first, 1931. Have they increased the service since that time, or were you giving the same service at that time that you are now rendering?

A. Substantially the same.

Q. Substantially the same. Now, Mr. Dickerson, what is the extent of the stock ownership held by Electric Bond and Share Company in the United Gas Public Service Company?

A. Seven and nineteen hundredths. Wait a minute. Will you read that question to me.

(Thereupon the Reporter read the last preceding question.)

A. Nothing.

Q. They own no stock in it?

A. No, sir.

Q. Do they hold stock of the United Gas system?

A. No, sir.

Q. Do they hold stock in any of the affiliate groups of the United Gas system?

A. They hold seven and nineteen hundredths per cent of the voting stock of the United Gas corporation, which in turn owns one hundred per cent of the voting stock of United Gas Public Service Company.

Mr. Bobbitt: I didn't get that straight.

[fol. 697] Mr. Coates: Read the answer.

(Thereupon the Reporter read the last preceding answer.)

Q. What do you mean by "voting stock"?

A. The common capital stock, which is entitled to vote—not preferred stock.

Q. Mr. Dickerson, let me ask you this question: Will you start with Electric Bond and Share Company, the concern with which you are connected and which company manages these properties and performs the services you have testi-

fied about, please, sir, and give us the connection between Electric Bond and Share Company down to the subsidiaries of United Gas Public Service Company at Laredo furnishing this service and owning these properties?

Mr. Coates: We believe the record here shows the connection of the voting stock here which constitutes control. Now, what is the relevancy of the holding of stock by Electric Bond and Share Company in any of the companies?

The Court: He didn't ask for all the companies, but for those serving Laredo only.

Mr. Coates: All right.

Q. Now, you are familiar with those. It will take only a short time, I believe. Just start there and come down to Laredo.

A. I was looking through my papers.

Q. All right. Take all the time necessary.

[fol. 698] A. Electric Bond and Share Company owns forty-seven per cent of the voting stock of the Electric Power & Light Corporation; Electric Power & Light Corporation owns sixty-one per cent of the voting stock of United Gas Corporation; United Gas Corporation owns one hundred per cent of the voting stock of United Gas Public Service Company.

Mr. Coates: That is in addition to that holding—or is it in addition to the holding of seven per cent plus of the stock of United Gas Corporation by Electric Bond and Share Company?

A. I don't know; I would have to check that up. My impression is that seven per cent plus owned by Electric Bond and Share Company is referred to——

Q. Well, now, what has become of the other concerns, South Texas Gas Company and Texas Border Gas Company,—what has become of those companies?

A. They are dissolved.

Q. They are dissolved. Where is the property, the leases and so forth, contracts, owned by them—do you know when they were dissolved?

A. In September or October, 1932. Let me correct that.

Q. Yes, sir.

A. The properties were taken over in September or October, 1932. The act of dissolution occurred after that.

The Court: Let's take a little recess, Gentlemen.

(Recess from 10:35 to 10:50 a. m.)

[fol. 699] (After Recess)

Q. Now, Mr. Dickerson, without taking up a lot of time and going into too much detail, I want to get a few things straightened out with reference to stock ownership. You testified Electric Bond and Share Company owned forty-seven per cent of the stock in Electric Power & Light Corporation?

A. Yes, sir.

Q. Who owns the other stock?

A. Some sixty-five thousand of the dear public.

Q. Some sixty-five thousand of the dear public?

A. Yes, sir.

Q. Are any of them—any of the dear public in Austin or Laredo that you know of?

A. I haven't a list of the stockholders, and I could not remember sixty-five thousand names and addresses, so I don't know.

Q. Does any other corporation own any stock in Electric Power & Light Corporation?

A. Those sixty-five thousand stockholders may include companies—insurance companies, individuals, and other corporations.

Q. The forty-seven per cent owned by Electric Bond and Share Company lacks four per cent of being a majority of the stock. Does Electric Bond and Share Company hold voting powers of some of these sixty-five thousand members of the dear public you testified about?

[fol. 700] A. I think not.

Q. Are you sure they don't?

A. The individual stockholder receives a proxy to vote on all matters of corporate importance in annual meetings.

Q. Electric Bond and Share Company holds proxies of these sixty-five thousand of the dear public you testified about?

A. Not necessarily.

Q. Well, they do in fact?

A. Not in fact. Proxies are submitted by those stockholders who feel so inclined.

Q. Electric Bond and Share Company's officers hold and vote them?

A. The nominees of Electric Bond and Share Company named in any meetings hold them and vote them.

Q. Mr. Dickerson, does Electric Bond and Share Com-

pany control the policies of the Electric Power & Light Corporation?

A. I think that is a fact.

The Court: Gentlemen, I hate to object when counsel on the other side don't, but I fail to see the materiality of the stock of Electric Power & Light when we are trying this case?

Mr. Bobbitt: I was just trying to hook it up.

Q. Then the sixty-one per cent of the United Gas Corporation is held by Electric Power & Light Corporation?

A. That is right.

[fol. 701] Q. Does Electric Bond and Share Company have a permit to do business in Texas?

A. I don't know, sir.

Q. You don't know?

A. No, sir.

Q. It is a foreign Corporation, isn't it?

A. Yes.

Mr. Coates: He said he didn't know.

The Court: The question now is whether it is a foreign corporation.

Q. Where is it incorporated?

A. Delaware.

Q. It is a Delaware corporation, and you don't know whether it has a permit to do business in Texas or not?

A. I do not.

Q. Mr. Dickerson, you testified as to the financial matters handled by Electric Bond and Share Company for United Gas Public Service Company and affiliated companies. What interest do they charge United Gas Public Service Company and their affiliates for the financial transactions they handle for them?

The Court: You mean what rate of interest per annum?

Q. What rate of interest do they charge?

A. What form of financial transactions do you refer to?

Q. Well, you said they financed them and furnished capital for them?

[fol. 702] A. I think not.

Q. I thought you said they loaned money?

A. They do.

Q. What rate of interest do they charge?

A. Six per cent.
Q. What commission do you charge?
A. None.
Q. None?
A. None.
Q. Are you certain of that?
A. Absolutely.
Q. Now, you testified this morning, Mr. Dickerson, with respect to that six cent gathering contract in the Carolina-Tex. field, that you thought it was a good contract at that time and it is a good contract now and, if I understood you, that the gas reserves or the gas supply was being depleted as one of the reasons you gave for the six cent contract; that is correct, isn't it?
A. No, sir; there is no six cent contract.

Mr. Coates: Mr. Bobbitt, it is a one cent gathering contract.
Mr. Bobbitt: But added to the five cents it makes six cents.
Mr. Coates: For gas gathering.

Q. Now, that was in 1929?
A. Yes, sir.
Q. Mr. Dickerson, didn't you as an officer and employe of [fol. 703] the company and the other officers of the company know at that time that you had in ownership and under lease contracts for gas in an almost unlimited supply?
A. We had contracts, but not gas; that was our difficulty.
Q. What do you mean?
A. We had contracts for all production under certain leases and under certain contracts, but didn't have the gas.
Q. Didn't you own leases on land in that vicinity there?
A. We did.
Q. Which were producing gas and had a large potential supply of gas?
A. A potential supply of gas can't get under the consumer's cook stove. It has to be brought to the surface and put into the lines.
Q. How is that?
A. It has to be brought to the surface and put into the lines by the expenditure of very substantial sums of money.
Q. I understand that.
A. Which the company did not have.
Q. I am talking about the reserve supply of gas.
A. A reserve can't be used until developed.

Q. I say, the company owned that by lease or otherwise and had control of the gas reserve?

A. That is correct.

Q. Isn't it true that under date of March 6, 1928, your company made this statement with respect to reserves in [fol. 704] these fields: "The gas reserves of the Jennings Field within the area covered by the leases and contracts held by the company are conservatively placed by Ralph E. Davis, Engineer, at forty-five billion cubic feet, and the gas reserves in the Carolina-Texas and Cole fields at four billion cubic feet, or a total reserve of forty-nine billion cubic feet, a quantity sufficient to constitute an adequate supply for the present markets over a period of twenty-five years." Did your company on March 6th, 1928, have a supply of gas in control represented by that statement?

A. I don't know.

Q. You don't know. Well, will you look at this paper here, Mr. Dickerson, and refresh your memory? (Hands paper to witness.)

Mr. Coates: Where is that?

Mr. Bobbitt: I asked Mr. Dickerson to refresh his memory with this. Do you want to look at this?

Mr. Coates: Yes, sir.

Mr. Bobbitt: Here is the statement I read.

Q. Have you looked over this circular?

A. Yes, sir.

Q. Was that circular issued by the South Texas Gas Company?

A. Presumably so. I was not with the Gas Company or any of the affiliated companies when it was issued.

Q. Were you with the companies that controlled or operated the affiliated companies?

[fol. 705] A. I was not at the time the circular was issued.

Q. When did you come with the company?

A. I think it was January, 1929.

Q. Mr. Dickerson, who would know accurately whether or not these reports as to the gas reserves were true?

A. Mr. Ralph E. Davis, presumably. He made the statement.

Q. I am talking about the officers of the company. Do you know?

A. I don't know who the officers were. I presume the officers would know.

Q. Now, you have looked over this instrument. It was issued in connection with the refinancing of the company's properties along the lines of the service you have testified about this morning, was it not?

A. No, sir.

Q. What was the purpose of the issuance of this circular?

A. I have no idea.

Mr. Coates: We object to it.

The Court: He was not with any of the companies at that time.

Mr. Coates: We further object because the authenticity of the statement has not been proved up as a proper predicate for questioning or impeaching the witness.

The Court: I think it would be proper questioning if he knows anything about it.

Q. Now, what officer of the company would know?

[fol. 706] The Court: He said he didn't know who the officers of the company were at that time.

Q. Well, have you found out since who were the officers at that time?

A. No, I have not.

Q. Did the Electric Bond and Share Company have anything to do with that circular at that time?

A. No, sir, and no financial interest in it—didn't know the company existed, so far as I am aware.

Q. How is that?

A. They didn't know even that the company existed, so far as I am aware.

Q. Who has paid the interest on the bonds referred to in this circular?

A. The company or its successor company, if earned, and United Gas has advanced the interest if not earned.

Q. How do you know those facts?

A. I have known them since the date of my connection with the consolidated properties, namely, June, 1930.

Q. You inq ired into it and became familiar with it?

A. I pass on most of the payments and earnings of the companies.

Q. Then the bond issue was actually made, as I understand and as you testify here,—the bond issue you testify about was actually made and issued?

A. What was the statement?

(Counsel hands paper to witness.)

A. Yes, sir.

[fol. 707] Mr. Bobbitt: If the Court please, this witness does not seem to know anything about the officers of the company who issued this. We would like to have time to get the Railroad Commission's reports and find out who the officers of the company were.

The Court: You can do that during the noon hour.

Mr. Bobbitt: Well, I want to reserve the right to do that.

The Court: All right; you can do that.

[fol. 708] Q. On the back of this circular, Mr. Dickerson, is a map or sketch of the Laredo gas section, is there not?

A. Yes, sir.

Q. Including the city of Laredo and the various fields around Laredo?

A. Yes, sir.

Q. From which the Company is taking?

A. (No answer made.)

The Court: As a matter of curiosity I would like to see that. May I look at that?

Mr. Bobbitt: Yes, sir.

The Court: All right, gentlemen; go ahead, I didn't mean to stop you.

Q. Mr. Dickerson, are you familiar with the contract under which natural gas is delivered to the Rio Grande Gas Company at the Jim Hogg Junction, as shown on the map—that is, the junction is shown on the map and the location of the delivery points?

Mr. Coates: We again object, that the authenticity of this instrument about which he is examining him has not been established.

Mr. Bobbitt: I am asking him about this map—the map back here.

A. Oh, well, it is on here, too.

Mr. Bobbitt: Well, I am talking about the one up there.

[fol. 709] A. In reply to your question, Mr. Bobbitt, I don't think I answered it, and I would like to have the question repeated.

Mr. Coates: Well you read the question?

A. The question before you showed the Judge this map.

(Thereupon the Reporter read the question referred to, as follows: "Q. From which the Company is taking gas?")

Q. I just asked, in passing, if that was supposed to be a representation of the fields there.

A. As of that date, presumably the Company was taking gas from the fields shown. The Cole field apparently was supplying gas only to Hebbronville. It was not connected to the system supplying Laredo.

Mr. Bobbitt: Now, will you read my question, read that question to him, please?

(Thereupon the Reporter read the question, as follows: "Q. Mr. Dickerson, are you familiar with the contract under which natural gas is delivered to the Reo Grande Gas Company at the Jim Hogg Junction, as shown on the map—that is, the junction is shown on the map and the location of the delivery points?")

Mr. Coates: Objected to because it is not shown that conditions are like and comparable, and no proper predicate laid for the question, and it purports to show a comparison of rates for a border delivery of high load factor gas for transportation to Monterrey with prices for gas for delivery [fol. 710] at a city gate such as Laredo.

The Court: I don't believe you understood the question, Mr. Coates.

Mr. Bobbitt: No, sir.

Mr. Coates: Possibly not.

Mr. Bobbitt: I don't see any use in taking up a lot of time. I just asked him if he is familiar——

The Court: Go ahead; I will overrule the objection.

Mr. Coates: Note our exception.

A. I know there is a contract. I am not now familiar with the terms of it; it has been several years since I have seen it.

Q. What is the price charged there for gas, at the junction?

Mr. Coates: To which we object because no proper predicate is laid by showing that conditions are like and comparable.

The Court: I will overrule the objection and let him answer.

Mr. Coates: Note our exception.

Q. What is the price, Mr. Dickerson?
A. I don't recall the price.
Q. You don't recall the price?
A. No, sir.
[fols. 711-712] Q. Do you know what officer of the Company would know?
A. I could ascertain——
Q. How is that?
A. I could ascertain the price.
Q. Will you do that, and let us know?
A. I will be very glad to.
Q. You are familiar with the price charged for gas at Laredo for industrial purposes, are you not?
A. Generally, yes, sir.
Q. It is twenty cents, isn't it, generally?
A. I——
Q. Well, you say you are familiar with it, generally. What is it?
A. I would say around twenty cents.

* * * * * * *

[fol. 713] Recross-examination.

Questions by Mr. Bobbitt:

Q. In connection with this service and work for them, what salary do you receive from——

Mr. Coates: To which we object, because it has no material bearing on any issue in this case, nor on the value—no material and determinative bearing on the cost of the service.

The Court: Now, wait a minute, Gentlemen. Be a little [fol. 714] careful here. I understand this man is employed by the Electric Bond and Share Company.

Mr. Bobbitt: Yes, sir, and the sponsor——

The Court: And he is the sponsor of this particular work down here.

Mr. Bobbitt: Yes, sir.

The Court: He can answer the question, I will overrule the objection.

Mr. Coates: Note our exception.

A. Twenty thousand dollars a year at the present time.
Q. Twenty thousand dollars a year?

A. Yes, sir.

Q. What was it six or eight months ago, or twelve months ago?

A. Twenty thousand dollars.

Q. What was it two years ago? That is within the period of time under investigation here.

Mr. Coates: We object to that as being too remote.

Q. The first of January, 1931?

Mr. Coates: Objected to as too remote.

A. Twenty-two thousand dollars.

Q. Twenty-two thousand dollars a year. That is salary, isn't it?

A. That is salary, and that is not billed to United Gas Public Service Company.

Q. Well, part of it billed there?

[fols. 715-716] A. None of it is billed there.

Q. In addition to that, why, you get some other remuneration, don't you, Mr. Dickerson?

A. Yes, sir.

Q. Don't you have an interest in the managing of the Company—Electric Bond and Share?

A. If I bought and paid for it I have the same as I have an interest in a home or an interest in a farm.

Q. Yes, sir. Well, didn't you get a bonus for the work performed in this sponsoring business, in the organization and promotion of these companies?

A. No, sir.

Q. Of course, all your expenses when you are out on a job, performing this service—that is all paid for?

A. The same as the City of Laredo pays yours up here, yes, sir.

Q. I hope yours is higher than mine.

* * * * * * *

[fol. 717] Recross-examination.

Questions by Mr. Fitzhugh:

Q. Mr. Dickerson, under the mortgage indenture that is now in force in connection with the financing of the transmission properties serving Laredo, doesn't the mortgage indenture provide that a sale of the properties, or part of

the properties may be made, if certain arrangements as to sinking fund provisions are made with the trustee for the loan?

[fol. 718] A. That is my recollection of the mortgage conditions, yes, sir.

* * * * * * *

A. D. GREENE, resumed the witness-stand, and testified as follows:

Recross-examination.

Questions by Mr. Lange:

Q. Mr. Greene, how long have you been with the Company—the Gas Company serving Laredo?

A. Since about the first of October, 1930.

Q. 1930? At the present time the United Gas Public Service Company is the only utility serving natural gas in Laredo?

A. As far as I know it is, yes, sir.

Q. And last year it was the only one, isn't that correct?

A. Well, I think so; I don't know.

[fol. 719] Q. Going as far back as the time that you began your connection with the Company there has only been the one utility serving natural gas to rate payers in Laredo?

A. That is all I know of.

Mr. Coates: Now, you are referring to the Texas Border Gas Company?

Mr. Lange: And its predecessor in title.

A. I know of only one.

Q. You don't know whether the same company which served prior to that time was the only company serving—furnishing natural gas in Laredo?

A. No, I do not.

Q. But at the present time it is the only one?

A. I don't know; I think it is.

Q. Well, you were down in the field and made this appraisal of the properties in Laredo, as you stated, Mr. Greene?

A. Yes, sir, of our properties.

Mr. Lange: Will Mr. Coates stipulate that?

Mr. Coates: I will stipulate that the only gas company rendering gas service—That is a fact, isn't it?

Mr. Lange: Yes, sir.

Mr. Coates: All right; if it is a fact I will stipulate it.

Mr. Lange: I am positive of it.

[fol. 720] Mr. Coates: All right; that is, United Gas Public Service Company and its predecessor companies.

Mr. Lange: And as far back as 1928, when your predecessors started.

Mr. Coates: Electric Bond and Share started in 1930. I will stipulate that far. I started in 1930.

Mr. Lange: I mean the companies that began this appeal before the Railroad Commission, began their corporate existence in 1928.

Mr. Coates: Yes.

Mr. Lange: And from that period on down this utility is the only one serving natural gas to the rate payers in the City of Laredo.

Mr. Coates: Well, I will stipulate back as far as I had any connection with the company, and that is 1930; and that was prior to the time this controversy began. And I will stipulate that from 1930 down to date this company and its predecessor companies have been the only companies serving gas to and within the city of Laredo.

Mr. Lange: That is all right.

The Court: I will call your attention to the fact, gentlemen, that the second witness you had on the stand—whatever his name is—gave the history of this thing from start to finish.

Mr. Lange: Except this one phase, if the Court please, [fol. 721] he didn't state that it was the only one serving it. I just wanted the record to show that.

The Court: He did make the statement that they were the only ones serving Laredo.

Mr. Lange: Yes, sir.

Q. Now, referring to the stretch of the Pescadito-Jennings transmission line about which you testified yesterday, Mr. Greene——

Mr. Bobbitt: Mr. Lange, speak out; we can't hear you, and I am sure the jury can't all hear you.

Q. The Pescadito-Jennings transmission line, concerning which you testified yesterday, you stated that a portion of that line was reconditioned last year.

A. Yes, sir.

Q. And you also stated that you and Mr. McGary had made a check of that line prior to the Railroad Commission hearing, with reference to determining its per cent condition.

A. Yes, sir.

Q. By mile posts, is that correct?

A. We made the inspection at each mile post.

Q. By mile posts?

A. Yes, sir.

Q. Do you know at which portion of the line this reconditioning was made last year?

A. Yes, sir. I do.

[fol. 722] Q. Could you tell us from which mile posts?

A. I can tell you approximately—it is approximately from Mile Post 10; that would be approximately ten miles from Jennings Junction, beginning at that point and extending four miles northwest.

Q. Four miles northwest?

A. And beginning again at—approximately at Mile Post 18 and extending about four miles to Mile Post 22.

Q. Now, do you know how many lineal feet of pipe were taken out of that line and not put back in that reconditioning work?

A. Yes, sir.

Q. Could you give us that?

A. When this reconditioning work began there was 11,000 feet of pipe shipped in to the job, and used in that reconditioning work, and naturally when the job was finished there would be 11,000 feet left.

Q. Was that new or itself reconditioned pipe?

A. Part of it was reconditioned; I am not certain whether all of it was reconditioned or part of it was new. I think that the major portion of it was reconditioned pipe.

Q. That entire line between Pescadito and Jennings is a six-inch transmission line?

A. Yes, sir.

Q. What is the distance——

[fols. 723-744] A. Well, not the entire line.

Q. Yes, sir.

A. There is some eight-inch and a little of the seven-inch.

Q. That is at the extreme south end?

A. Yes, sir.

Q. Now, what is the distance of the line—of the transmission line extending from Jennings Junction to Roma?

A. In round numbers, that is 47 miles. I can't tell you the exact number of miles.

Q. That is twelve-inch pipe?

A. Yes, sir.

Q. The entire distance?

A. Yes, sir.

* * * * * * *

[fol. 745] Testimony of P. McDonald Biddison

Cross-examination.

Questions by Mr. Bobbitt:

Q. Do you know the population of Laredo?

A. Only approximately.

Q. What is it, approximately?

A. Something like thirty thousand, is my recollection.

Q. Isn't it about thirty-seven or thirty-eight thousand?

A. It may be.

Q. Do you know the increase from decade to decade—that is, each ten years—of the population?

A. No, sir.

Q. You don't know about that?

A. No, sir; I don't know what that is.

Q. You spoke of the gas reserves of a property situated [fol. 746] in an area where the gas reserves are limited as they are in this area. Do you know anything about the gas reserves down there?

A. I didn't state they were limited. I said the pools were of small area comparatively and comparatively short lives.

Q. Do you know that of your own investigation or survey?

A. That is a matter of general knowledge. I have made no special investigation of the reserves in that area.

Q. By this free flow of capital, you mean folks furnishing capital or money to build businesses like these gas pipe lines?

A. Yes.

Q. That is that you mean?

A. Yes.

Q. And people don't invest money, as a rule, along the

lines that you have suggested unless they understand, or think they understand, that they would probably get a return on it?

A. That is correct.

Q. And do you know how many main gas transmission lines have been built and constructed out of the Laredo gas area to San Antonio?

A. No; I don't offhand.

Q. Well, you don't know. Do you know how many gas transmission lines have been constructed from that area to the City of Houston?

Mr. Coates: What do you mean by "Laredo area"?

[fol. 747] Mr. Bobbitt: I mean what I say.

Mr. Coates: "Laredo area" has come through use here to have a fairly well defined meaning as being the area within which these lines which serve Laredo are located.

The Court: Yes, sir.

Mr. Bobbitt: Well, say, the Carolina-Texas, the Bruni, Jennings, Cole——

Mr. Coates: I don't like to break in here, but I don't think that the record reflects that the Cole and Bruni fields have been included in the Laredo area, as the term has been used in this case.

Mr. Bobbitt: It is on the map there. It shows the Bruni field. We have been talking about it here for a week. We are talking about the field of gas transmission lines in the vicinity of Laredo.

Mr. Coates: We object to the question because it is not sufficiently definite in stating the field to which the question relates.

The Court: I believe you had better be a little more definite.

Q. Do you know, Mr. Biddison, the gas fields located in the Laredo area?

A. Why, I don't know that I know them all, no.

Q. Do you know some of them?

A. Yes.

Q. Name some of them.

A. There are a bunch shown on this map here—the Jen-

[fol. 748] nings, Carolina-Tex field, Bruni field, Jim Hogg field, Cole field, Escobas——

Q. That is where that three-cent gas is, isn't it?

Mr. Coates: We object to counsel's remark.

The Court: Yes, sir; gentlemen, you will not consider that remark as testimony.

A. —the old Schott field.

Mr. Bobbitt: I beg pardon for the remark.

Q. Those fields named, are those generally in the Laredo area?

A. Yes, sir.

Q. Do you know how many main gas transmission lines have been built out of those fields to Houston, Texas, Monterrey, Mexico, San Antonio, Texas, and Brownsville and the Lower Valley?

A. I don't know that I know them all. I know two major pipe line systems that run into Houston, which have connections out into that general area. I know there is a line from that general area down to Monterrey. I know that is a line from that general area that connects into the San Antonio area.

Q. Do you know that the transmission line from that area to Houston cost twenty million dollars?

A. I don't know what it cost.

Q. Do you know what the two main transmission lines from that area to San Antonio cost?

A. I do not.

Q. And on up to New Braunfels and Austin?

[fol. 749] A. I do not.

Q. Do you know what the transmission lines in that area cost down to Roma and on to Monterrey, Mexico?

A. No, sir.

Q. Do you know what the transmission lines from that area to the cities in the Valley and to Brownsville cost?

A. I do not.

Q. On this free flow of capital idea that has been developed here, that capital would not have flown freely if the investors did not feel, based upon investigation or knowledge, or apparent knowledge of conditions, that they would get a return on the investment that had made in the construction of those pipe lines?

A. I don't understand the question.

Q. I will withdraw that question. Those numerous transmission lines that we have just enumerated there would not, as a practical matter from an investor's standpoint, have been constructed unless the investors knew or thought they

knew there was a permanent supply of gas in that area, would they?

A. Without having in view that there was a permanent supply of gas in that area, I hardly think any of them would have been financed if there had not been an expectancy that there would be a supply there in that area or other areas available to the pipe line that would make the venture profitable.

[fol. 750] Q. And the construction of those numerous gas transmission lines entailed quite a free flow of capital to construct and build them, did it not?

A. Yes, sir.

Q. And these accrual rates for depreciation of five per cent on distribution, six per cent on transmission, and ten per cent on gathering system, that is your opinion of what the rate ought to be, isn't it?

A. Yes, sir.

Q. And in addition to that amount, they are entitled to ten per cent net return?

A. That is my opinion, yes, sir.

Q. So in the case of the distribution system it is fifteen per cent, in the transmission system it is sixteen per cent; and in the case of the gathering system twenty per cent?

A. Not net return, no. Those are the percentages which I think should be available to the owners for the two purposes of depreciation accrual and return.

Q. Yes, sir. That is what I understood was your testimony. I wanted to see that it was clear. Mr. Biddison, the rate case expenses—what are commonly known as rate case expenses—is an item that goes into Operating Expenses, and charged by the utilities, isn't it?

A. It would normally be so charged as an operating expense item.

Q. Isn't it normally so charged, or attempted to be charged?

A. Yes; I think so.

[fol. 751] Q. And it is your opinion that the rate case expenses, such as in this case here, is a proper charge against Operating Expenses, and a proper charge back to the rate payers?

A. I think it is a proper item to be set up as an operating expense, but I don't know how anybody is going to charge it against any rate payers.

Q. If it goes into Operating Expenses, and rates are based on that and collected, don't they pay it?

Mr. Coates: We object to that as argumentative, and based on an erroneous legal conclusion.

The Court: The objection is sustained that it is argumentative.

Q. Well, it goes into Operating Expenses?

A. Yes, sir; I think so, properly.

Q. You are an expert, and we have listened with much interest to your experience as you have detailed it here to us. You have had a large experience in such matters, and that is a proper and usual and customary charge?

A. Yes; I am agreeing with you on that.

Q. Yes, sir; now, in that connection, the usual method is to amortize it or split it over a period of years?

A. That would depend on the circumstances in connection with any particular case.

Q. And those charges, in your opinion, as an expert, ought to be reasonable, ought they not?

A. Why, yes, I think all charges should be reasonable.

[fol. 752] Q. And your services, and expert opinion and advice in connection with this rate case is one of the items that go into that charge, in this particular case?

A. I believe so, yes.

Q. And Mr. Biddison, what per diem or salary or fee do you charge for your attendance here in Court in this proceeding for your professional services?

Mr. Coates: We object to that, because it is immaterial for any issue in this case. It does not pertain to any testimony that has been given.

The Court: Go ahead.

Mr. Coates: Note our exception.

A. Well, I have not had any understanding with this organization with regard to this particular case.

Q. Have you any idea what you are going to bill them—the United Gas Public Service Company—for your professional services in attending Court here from day to day?

A. Yes, sir.

Q. What is it?

A. I am going to bill them at one hundred dollars a day.

Q. For each day?

A. Yes, sir.

Q. In addition to that, expenses?
A. Yes, sir.
Q. And you have been here since the trial started?
A. Except two days.

Mr. Bobbitt: I believe that is all.

* * * * * * * *

[fol. 753] C. F. PETET, recalled by the defendant, testified as follows:

Direct examination.

Questions by Mr. Coates:

Q. You are the same C. F. Petet that has previously testified in this case?
A. Yes, sir.
Q. And your position is?
A. I am Secretary of the Railroad Commission of Texas.
Q. Are you the custodian of the records of the Railroad Commission, including its records in cases heard by the Gas Utilities Division?
A. Yes, sir.
[fol. 754] Q. You have been subpoenaed to bring here, I believe, Mr. Petet, the record, consisting of the transcript of testimony and the exhibits of the parties in Gas Utilities Dockets Numbers 49 and 63, heard by the Railroad Commission of Texas?
A. Yes, sir.
Q. And have you brought that record, consisting of both the testimony and the exhibits, here into court?
A. Yes, sir.
Q. And is the record here in front of you?
A. Yes, sir.

Mr. Coates: The defendant now offers in evidence as Defendant's Exhibit Number 13 the record, including testimony and exhibits, of the proceedings before the Railroad Commission in the case of the City of Laredo, known as Gas Utilities Dockets Numbers 49 and 63, consisting of:

Book No. 1 of the transcribed testimony, being a part of the testimony heard in October, 1932;

Book No. 2 of the transcribed testimony, being the remaining portion of the testimony in this hearing heard in October, 1932;

(Said Books 1 and 2 are bound together and comprise Volume "A" of this Statement of Facts.)

Book No. 1 of the Transcript of Testimony, being a portion of the testimony before the Railroad Commission heard in November, 1932;

Book No. 2 of the Transcript of Testimony, being the remainder of the testimony heard before the Railroad Commission in November, 1932.

(Said Books 1 and 2 are bound together and comprise Volume "B" of this Statement of Facts.)

[fol. 755] Company's Exhibits, as follows:

Exhibit No. 1, (Set out in Volume "C", at page 1762).
Exhibit No. 2, (Set out in Volume "C", at page 2059).
Exhibit No. 3, (Set out in Volume "C", at page 2071).
Exhibit No. 4, (Set out in Volume "C", at page 2081).
Exhibit No. 4-A (Set out in Volume "C", at page 2088).
Exhibit No. 5, (Set out in Volume "C", at page 2107).
Exhibit No. 5-A (Set out in Volume "C", at page 2117).
Exhibit No. 6, (Set out in Volume "C", at page 2120).
Exhibit No. 7, (Set out in Volume "C", at page 2122).
Exhibit No. 8, (Set out in Volume "C", at page 2126).
Exhibit No. 9,—Two instruments, both marked Exhibit No. 9, one being a partly handwritten and partly typewritten copy of a contract dated December 31, 1929, between the South Texas Gas Company, seller, and Compania Mexicana de Gas (Set out in Volume "C", at page 2138); and the other being a photostatic copy of a typewritten contract of three pages, being amendment to a contract between the South Texas Gas Company and Compania Mexicana de Gas, dated January 23, 1932 (Set out in Volume "C", p. 2143).
Exhibit No. 10, (Set out in Volume "C", at page 2148).
Exhibit No. 11, (Set out in Volume "C", at page 2157).

City of Laredo Exhibits, as follows:

Exhibit "A", Appraisal, (Set out in Vol. "D", page 2165).
Exhibit "A" (2), (Set out in Vol. "D", page 2413).

Exhibit "B", (Set out in Vol. 'D", page 2419).
[fol. 756] Exhibit "C", (Set out in Volume "D", at page 2426).
Exhibit "D", (Set out in Volume "D", at page 2428).
Exhibit "E", (Set out in Volume "D", at page 2433).
Exhibit "F", (Set out in Volume "D", at page 2436).
Exhibit "G", (Set out in Volume "D", at page 2438).
Exhibit "H", (Set out in Volume "D", at page 2442).
Exhibit A—Supplement 1, (Set out in Volume "D", at page 2415).
Exhibit A—Supplement 2, (Set out in Volume "D", at page 2417).
Exhibit "I", Map, (Set out in Volume "E", at page —).
Exhibit "J", Map, (Set out in Volume "E", at page —).
Exhibit "K", Map, (Set out in Volume "E", at page —).
Exhibit "L", (Set out in Volume "D", at page 2449).

Mr. Coates: Defendant's Exhibit No. 13 is offered in support of the allegations contained in Defendant's Answer, in Subdivision "C", being the allegations with respect to defects in the Railroad Commission's order.

Mr. Bobbitt: To which we object; and the same objection goes to each and every one of them.

The Court: Which objections are overruled.

Mr. Bobbitt: To which we except.

NOTE.—The foregoing Defendant's Exhibit No. 13 has not been transcribed, but the original of such exhibit consists of and composes Volumes "A" to "E" of this record. The original of Defendant's Exhibit No. 13 has been bound and used as a part of the record by agreement of counsel and under direction of the Court.

* * * * * * *

[fol. 757] W. W. STEIN, a witness for defendant, was recalled by plaintiffs for further cross-examination, and testified as follows:

Recross-examination.

Questions by Mr. Bobbitt:

Q. You are the same Mr. W. W. Stein who testified in this case heretofore?

A. Yes, sir.

Mr. Lange: It is understood, of course, that this is still part of his testimony.

The Court: Yes, it is part of the cross-examination.

Q. You are District Manager of the United Gas Public Service Company at Laredo?

A. Yes.

Q. Have you got the information that we asked you for the other day and which you told us you could furnish?

A. I have not got it; I have not been able to get at it to give you the information in the way you wanted it.

Q. That is the number of meters, you understand, which are metering gas in the city of Laredo at seventy-five cents per thousand.

[fol. 758] A. Yes.

Q. As of December 31, 1933?

A. Yes.

Q. You are going to get that for us?

A. I will get it.

Q. And it will be furnished in the case before it closes?

The Court: It will be furnished as part of your cross-examination of the witness.

Mr. Bobbitt: Yes, sir.

Q. Mr. Stein, I will ask you to look at this list of officers and directors. I hand you what is stated to be an annual report of the South Texas Gas Company made to the Railroad Commission of Texas for the year ended December 31, 1928, and ask you to look at page five of that.

Mr. Coates: Wait a minute. We object to the report on the ground that it is entirely too remote to have any bearing.

The Court: He is not offering the report.

Mr. Bobbitt: I just want to qualify the witness on some questions I want to ask him.

Mr. Coates: The objection is withdrawn.

Q. Look at page five of the report, Mr. Stein, and refreshing your memory from that report can you tell us who the officers of the South Texas Gas Company were for the year 1928?

A. For what year, please?

Q. 1928.

A. The officers?

[fol. 759] Q. Yes, sir.

A. O. R. Seagraves, President; W. L. Moody, III, First Vice President; W. W. Stein, Second Vice President; G. F. Balme, Third Vice President; N. O. Oille, Secretary; and W. L. Moody, III, Treasurer.

Q. Those were the officers of the South Texas Gas Company for the year 1928?

A. Yes.

Q. And the W. W. Stein whose name you read as Vice President was Vice President during 1928 of the South Texas Gas Company—you are the same W. W. Stein?

A. Yes, sir.

Q. That is listed as Vice President of the Company here—that is correct, isn't it?

A. That is correct.

Q. I show you an instrument, Mr. Stein, headed "South Texas Gas Company—March 6, 1928", of which concern you are Vice President or were at that time Vice President; and I will ask you if the Company issued that statement of the date stated, March 6, 1928?

A. I was not with the South Texas Gas Company on March 1, 1928, nor on March 6, 1928.

Q. When did you go with the South Texas Gas Company?

A. About April 10, 1928.

Q. About April 10. Did you have any connection with the Company at that time?

A. With the South Texas Gas Company?

Q. Yes.

[fol. 760] A. I did not.

Q. Did you have any connection with any subsidiary of the South Texas Gas Company?

A. I did not.

Q. What were you doing and where were you located on March 6, 1928?

A. I was with the Border Gas Company on March 6, 1928.

Q. The Border Gas Company is a part of the South Texas Gas Company?

A. It had no connection with the South Texas Gas Company at that time.

Q. Do you know when the South Texas Gas Company was organized?

A. I don't remember the date.

Q. What concern where you with on March 6, 1928?

The Court: He said the Border Gas Company.

Mr. Bobbitt: I beg your pardon. I overlooked that.

Q. Do you know the date of the organization of the South Texas Gas Company?

A. I don't remember the date.

Mr. Coates: He just said he did not.

Q. Can you refresh your memory by looking at this report there?

A. I could remember the date reported in this report, yes.

Q. But you have no independent recollection or information about it. Mr. Stein, were you not one of the original officers and organizers of the South Texas Gas Company?

A. I believe not.

Q. You are not certain about it?

[fol. 761] A. I don't think I was an officer when it was originally organized.

Q. Well, during your incumbency as Vice President of the South Texas Gas Company you became familiar with and had knowledge of the instrument you now hold in your hand?

A. I had seen a copy of it after I became Vice President of the Company.

Q. And the Company sold stock and bonds after you became Vice President of the South Texas Gas Company?

A. It would be a presumption, but I believe so. I don't know what they did at that time in regard to the sale of stock and bonds.

Q. You saw that circular, and it was a part of the literature and the inducements held out by the Company, of which you were Vice President, to purchasers to purchase bonds and stock in the Company; that is correct, isn't it?

A. I saw a copy of a circular such as this one; it was handed to me by a local banker in the community.

Q. In connection with the sale of stocks and bonds?

A. I presume it was in connection with it. I had nothing to do with the sale of bonds or stock of the Company.

Q. That instrument was put out by the Company and you had knowledge of it and contact with it while you were Vice President of the concern?

Mr. Coates: Now, we don't think that is a proper source of information for the statement you are seeking to put in his mouth.

[fol. 762] Mr. Bobbitt: I am not intentionally trying to put anything in his mouth. I am trying to get him to recognize some of the Company's literature.

The Court: Gentlemen, I really think that that question ought to be asked in one section at a time.

Mr. Bobbitt: All right.

Q. You had experience with that circular with at least one banker in Laredo, didn't you?

A. That banker happened to receive it in the mail and he showed it to me when I happened to be in his office one day.

Q. And he asked about the Company of which you were Vice President?

A. No, he did not. He simply showed me something that pertained to the South Texas Gas Company, and inasmuch as it referred to Laredo he thought that I would be interested in it.

Q. You were interested in it?

A. I was very much interested in it; I read the copy.

Q. At that time you were Vice President?

A. It was after I became Vice President, I believe.

Mr. Bobbitt: Now, if the Court please, we offer this instrument in evidence.

Mr. Coates: We object to it as not being properly identified.

The Court: The objection is sustained.

Q. Do you know of any other copies of that instrument, Mr. Stein, that you had experience with as Vice President of the South Texas Gas Company?

[fol. 763] A. Experience with?

Q. Yes. You were interested in selling the bonds and stocks of the concern?

Mr. Coates: We object to that.

The Court: He said he had nothing to do with the sale of bonds and stock.

Q. Do you know of more than one bond issue?

The Court: By whom?

Q. By the South Texas Gas Company.

A. I don't know off-hand; I don't know whether there were any more or not.

Q. They made a sale of bonds of the South Texas Gas Company while you were Vice President?

A. I don't know whether they did or not.

Q. Don't you know whether they got any money as the result of their efforts to raise capital—as a result of these advertisements?

A. I don't know where they got the money. I know that they had some money to pay for the properties.

Q. You don't know whether they got it as a result of the sale of bonds described in that circular?

A. I don't know.

Q. You don't know?

A. It would be purely a presumption on my part, because I had nothing to do with that phase of the organization.

Q. Well, who had charge of that phase of it?

A. I don't know. I could give you——

Mr. Coates: He is asking for your sworn testimony as to [fol. 764] facts within your knowledge given under oath. If you know, tell him.

A. I don't know.

Q. You don't know. Well, as Vice President of the Company, do you know of anybody that does know?

A. I could not say for sure, Mr. Bobbitt.

Q. Well, can you tell us anything you know about the South Texas Gas Company? You were Vice President of it.

A. I possibly could along some other lines.

Q. Well, it might be pertinent. What other lines?

Mr. Coates: Now, we object to the question as being too broad and general.

The Court: Come here Mr. Bobbitt.

(Counsel for plaintiffs and defendant conferred with the Court, out of the hearing of the jury.)

The Court: The objection is sustained.

Mr. Bobbitt: Note the exception.

Q. Mr. Stein, I hand you what I understand is an annual report of the South Texas Gas Company made to the Railroad Commission of Texas for the year ended December 31, 1928, and ask you to read at page thirty-nine thereof in reference to the organization of the South Texas Gas Company.

Mr. Coates: We object to the question, because it is based on the instrument that has not been properly identified.

The Court: The objection is sustained.

Mr. Bobbitt: We except.

[fol. 765] Q. Mr. Stein, this report is signed by O. R. Seagraves, stated here to be the president of the South Texas Gas Company.

Mr. Coates: The same objection, and not shown to have any materiality or relevancy in view of the Court's ruling.

The Court: If he just wants to prove that the report is signed by Seagraves, I will let him do it.

Q. And it is signed by Mr. Oille, who was Treasurer of the concern. You don't know of your own knowledge whether this report was made by the Company of which you were Vice President to the Railroad Commission of Texas?

A. I never saw the report before, that I know of.

Q. You don't know anything about it?

A. No, sir.

Q. The South Texas Gas Company was organized on March 5, 1928, was it not, Mr. Stein, for the purpose of taking over and did it not in fact take over all the properties of the Border Gas Company?

Mr. Coates: We object to that question as duplicitous and double-barreled.

The Court: Read the question, Mr. Reporter.

(Thereupon the Reporter read the question, as follows: "Q. The South Texas Gas Company was organized on March 5, 1928, was it not, Mr. Stein, for the purpose of taking over and did it not in fact take over all the properties of the Border Gas Company?")

Mr. Coates: It is triple-barreled and we object. It is three questions in one.

The Court: Well, all right, break it up.

[fol. 766] Mr. Bobbitt: Well, all right.

Q. The South Texas Gas Company was organized on March 5, 1928, was it not?

A. According to the information I have seen, I believe that is the date.

Q. And the South Texas Gas Company took over all the properties of the old Border Gas Company, did it not?

A. It did later.

Q. How much later?

A. April 10th or 11th, 1928.

Q. And up until you went with the South Texas Gas Company in April, 1928, you were with the Border Gas Company?

A. That is correct.

Q. The new company took over the old company and you went with the old company to the new company; that is correct, isn't it?

A. They began to pay me a salary when they took charge of the operations in Laredo.

Q. Until they began paying you a salary the Border Gas Company paid you?

A. That is right.

Q. What office did you hold with the Border Gas Company?

A. At that time I believe I was Vice President; I am not sure.

Q. You are not sure?

A. I am not sure. I believe I was shortly before they sold the property.

Q. Now, Mr. Stein, since you were on the stand the other day have you acquired the information and refreshed your [fol. 767] memory as to the price of industrial gas sold by your concern at the points I asked you about the other day—San Antonio, New Braunfels, and Austin?

A. I did not get that information up. I did not know you wanted me to.

Q. You don't know anything about it?

A. No.

Q. Nor Houston?

A. Nor Houston.

Q. I believe you told us that you did know the price at Roma, twelve cents?

A. I don't remember mentioning Roma. Which price do you mean?

Q. Well, have you got two prices?

A. I don't know whether you mean the distribution system in Roma or the pipeline.

Q. Well, the industrial price at Roma, that goes through the Roma gate.

Mr. Coates: We renew our objection.

A. I don't know what you mean, Mr. Bobbitt.

Q. Well, you deliver gas for industrial purposes over at the Roma gate for Mexico and I wanted to show that you charge twelve cents for that gas going into Mexico for industrial purposes.

Mr. Coates: The same objection.

The Court: Did the witness testify to that the other day?

Mr. Bobbitt: I think he did. I am not certain.

[fol. 768] The Court: Ask him if he did.

Q. Did you?

A. I testified in regard to a price of twelve cents per thousand cubic feet charged for gas delivered at Roma sometime ago.

Mr. Coates: The objection goes to all that.

The Court: All right.

Q. And did you tell us the price that you- company charges for gas for industrial purposes in Nuevo Laredo, just across from the city of Laredo?

A. I did not.

Q. What is that price?

A. Our company does not sell gas in Nuevo Laredo.

Q. Do you deliver any there?

A. No, sir.

Q. Do you deliver any at the city gate?

A. What city gate?

Q. Nuevo Laredo city gate?

A. We sell gas on this side of the river.

Q. To Nuevo Laredo—it goes to Nuevo Laredo?

A. Goes there.

Q. What do you get for it where you sell and deliver it?

A. I would have to check into that price, Mr. Bobbitt. I didn't know you wanted that information.

Q. You deliver it to a meter just this side of the river for delivery into Mexico?

A. We deliver it to the gas company that is on the Mexico side on this side of the river.

[fol. 769] Q. What do they pay you for it per thousand cubic feet?

A. The price is thirty cents per thousand cubic feet for domestic gas.

The Court: By "domestic gas", what do you mean?

A. Residential gas sold at their residential rates. The

commercial and industrial gas sold by it—I would like to refer to that contract to get that correct. I have not looked at it for sometime and I don't figure the bills so I am not certain about it.

Q. Well, not being exactly certain, Mr. Stein, do you know approximately what your company gets for gas that you deliver at Nuevo Laredo?

A. I can give you approximate figures.

Q. What is it?

A. Commercial and industrial gas is sold at a price whereby we get a percentage of what the Nuevo Laredo Gas Company gets for it.

Q. What does the percentage amount to in dollars and cents in U. S. currency?

A. About eighty-five percent of the price they get for it in U. S. currency.

Q. What does it amount to coming to your company?

A. I don't know.

Q. Do you know what they get for it for industrial purposes?

A. I don't know the price right off-hand. They have a set of schedules and prices.

Q. Do you know what the soap factory pays for it in Nuevo Laredo?

[fol. 770] A. What soap factory?

Q. The Longoria Soap Factory.

A. I believe they pay—I believe I know it.

Q. Well, what is it?

A. Fourteen and a half cents per thousand cubic feet.

Q. Fourteen and a half cents per thousand cubic feet is what the Longoria Soap Factory pays for it?

A. Pays the Nuevo Laredo Gas Company.

Q. And your company gets eighty per cent—eighty-five per cent, I believe, is the figure, and all of this gas, now, that you have just been telling us about goes through the Laredo distribution system; that is correct, isn't it?

A. It goes through a part of the Laredo distribution system.

Mr. Bobbitt: That is all.

The Court: We will take a few minutes recess.

Recess.

[fol. 771] March 15, 1934

Plaintiffs' Rebuttal

The Court: All right, gentlemen.

LEON O. LEWIS, a witness for plaintiffs, having been duly sworn, testified as follows:

Direct examination.

Questions by Mr. Lange:

Q. State your name.
A. My name is Leon O. Lewis, Jr.
Q. Where do you reside, Mr. Lewis?
A. San Antonio.
Q. What is your occupation?
A. I am a Public Accountant.
Q. I will ask you whether you are a Certified Public Accountant.
A. Yes, sir, I am a Certified Public Accountant.
Q. Do you have a certificate in this State—issued in this State?
A. Yes, sir.
Q. How long have you had that certificate?
A. Since July, 1927.
Q. July, 1927?
A. Yes, sir.
Q. What degree, if any, do you have, and from what school?
A. I am a graduate of the University of Texas, and have a Bachelor of Business Administration degree.
[fol. 772] Q. Is that the degree issued by the University School of Business Administration at Austin, Texas?
A. Yes, sir.
Q. Mr. Lewis, I will ask you when you first began your work in connection with the auditing of the books and records of the then South Texas Gas Company and Border Gas Company—approximately when you began.
A. I don't know the exact date. It was about the first of July, 1931.
Q. At that time you were a member of the firm of—what was the name of the auditing firm?
A. I was not a member of the firm; I was in the employ of Rodgers, Smith & Company, of San Antonio.

Q. Rodgers, Smith & Company. What is their business?
A. Public accountants.
Q. Where are they located?
A. In San Antonio.
Q. And you say you began working at Laredo or Houston —where did you begin the work?

The Court: Do you mean the first work you did as a Certified Accountant or——
The Witness: No, on this job.
Mr. Lange: No, I was referring to this case.
The Court: All right.

Q. To go back—prior to that, though, what character of [fol. 773] auditing work did you do prior to beginning on this case, with reference to auditing books and records of utility companies?
A. Well, my work as a public accountant, of course, has been in every type of business and industry, and aside from this job the only major utility work I have done for rate purposes was in connection with the Lone Star Gas investigation that was conducted by the Railroad Commission.
Q. When was that conducted and how long—how long were you employed on that work?
A. From sometime in December, 1931, until about the first of June, 1932.
Q. And that covered what period of operations of that company?
A. Five years.
Q. Five years?
A. Yes, sir.
Q. What was the approximate amount of property value in that case?
A. I don't recall the property value; I think their transmission lines—I don't even recall the mileage; I think it was somewhere around four thousand miles.
Q. Was it the Lone Star Gas System?
A. The Star Gas Company.
Q. The Lone Star Gas Company, operating in the State of [fol. 774] Texas?
A. And Oklahoma.
Q. And Oklahoma?
A. Yes, sir.
Q. And who employed you in that work?

A. My company was employed by the Railroad Commission in connection with that work.

Q. The Railroad Commission of Texas?

A. And the J. A. Phillips Company, of Houston, were also on the same job. We worked it together.

Q. In speaking of the Railroad Commission, you mean the Railroad Commission of Texas?

A. Yes. And we did the same work for the Railroad Commission of Oklahoma.

Q. In connection with what, the valuation of those properties or the preparation of operating statements, was it?

A. Well, we made an audit of operations and made studies of the historical costs of the transmission properties from the time of the incorporation of the company, somewhere around 1909, or 1910; I don't recall the exact time.

Q. The part of the work affecting the Oklahoma part of the system, was that valued at that time by the Oklahoma Commission—was that the occasion of this work there?

A. At the time we did the work for the Texas Commis- [fol. 775] sion—I say we did the work for the Texas Commission; it was not directly for the Texas Commission; we did the work for the engineers who were employed by the Texas Commission, and at that time the Oklahoma Commission availed themselves of the services of that engineering firm, and we did the accounting on that engagement.

Q. What was the name of that engineering firm?

A. Hawley, Freese & Nichols.

Q. Where are their headquarters?

A. Fort Worth.

Q. Fort Worth? Now, Mr. Lewis, referring back to this particular case, approximately what month did you begin the work, and in what year?

A. The first assignment we had was covering the old Border Gas Company's operations and the operations of the Texas Border Gas Company and the South Texas Gas Company for the year ended February 28, 1931; that work was started about July 1, 1931.

Q. And how long were you engaged in doing that auditing work—approximately how long?

A. Approximately three months.

Q. Approximately three months?

A. That engagement was supplemented and the work brought down to June, 1931, before the engagement was finished.

Q. Well, how much?

A. Why, I think about three months total time.

[fol. 776] Q. And then how much, if any, additional time did you put in on this work?

A. In 1932 before, the Commission hearing last year, we did some additional work down to July 31, 1932, and I was on that work something like two or three months, I think; I am not sure of the exact time that was put in.

Q. And the last supplemental work, low long were you on that and when?

A. Well, this last engagement was, first, for the year ended October 31, 1933, and then was extended to include December 31, 1933, and I was on that work something like—somewhere between sixty and ninety days, I should say—the months of December and January and part of February.

Q. Now, who in connection with the firm of F. G. Rodgers & Company worked with you on all or part of this work?

A. Well, I had a number of men doing some parts of the work—sometimes as many as four or five. Do you want me to name all of them?

Q. Who was the senior accountant in charge of the part of the work that you did not do?

A. Mr. Kinney.

Q. What are his initials?

A. Mr. J. P. Kinney.

Q. J. P. Kinney.

A. He made the investigations of the old Border Gas [fol. 777] Company up to the time of its—the change in ownership at April 10, 1928.

Q. Now, what part of the work did Mr. Kinney do in connection with this audit—what period?

A. From the incorporation of the old Border Gas Company in 1910 or 1911, I believe it was, until the Border Gas Company was sold to the South Texas in April, 1928.

Q. Now, in connection with this auditing work for the City of Laredo, I will ask you whether you prepared an exhibit reflecting computations taken from the books and records of the company—is this an exhibit which you prepared on the historical costs of the properties? (Counsel hands document to witness.)

A. Yes, I prepared this exhibit.

Mr. Coates: May it be understood that we will make a superficial examination of these exhibits as they come, for

the purpose of seeing whether there are any objections apparent on the face of them, and then within a reasonable time after we have had them and made a fuller examination of them may we at that time, if any material objection discloses itself make the objection?

The Court: No; I will let you do this; I will let you examine them now for anything apparent on its face, and [fol. 778] if you don't find anything, it will go into the record; then, if you later find the whole record objectionable you may make a motion to strike, and I will consider it then.

Mr. Coates: Very well.

The Court: Or strike any item which you may later find objectionable.

Mr. Lange: We desire at this time to introduce this exhibit in evidence as Plaintiffs' Exhibit No. 4.

The Court: Now, do you desire to offer at this time any objection to this?

Mr. Coates: Not at this time.

The Court: All right; it is admitted, then.

(Thereupon the document above referred to was marked Plaintiffs' Exhibit No. 4. This exhibit appears in Volume of Exhibits III, page 1771.)

Q. Mr. Lewis, turning to page 2 of the exhibit, what does the heading on page 2 recite?

A. The title?

Q. Yes.

A. The Border Gas Company, Texas Border Gas Company, and South Texas Gas Company, Historical Cost of Fixed Capital as Shown by Books.

Q. Now, Mr. Lewis——

A. And there is an asterisk referring to a foot-note there that the additions identified as pertaining to the transmission line from Jennings to Roma have been eliminated in [fol. 779] making this study.

Q. Now, I will ask you whether the first part of the auditing work reflected in this exhibit was computed by Mr. Kinney from the books and records of the Company?

A. Mr. Kinney made the audit of the old Border Gas Company from 1910 to April 10, 1928, and the figures appearing upon this schedule as historical cost and the provision for depreciation charged to operations were computed by him down to the time the properties were transferred to South Texas Gas Company, and from that point on——

Q. Just indicate where that point is—where you began your work in connection with this exhibit.

A. About the middle of the exhibit, where it states "Total books costs of properties transferred to South Texas Gas Company".

Q. The work ahead of that was performed by Mr. Kinney?

A. Yes, sir.

Q. Mr. Lewis, proceeding on page 2, the exhibit reflects the heading South Texas Gas Company and Texas Border Gas Company, beginning with the period of April 10, 1928, to December 31, 1928; and under the general heading of Historical Cost per Books, explain the columns as they appear. The first column is Additions, and the next is Retirements, and then the third reads Net Additions, and the fourth Accumulated Additions. Is that the three studies in that——

[fol. 780] A. In the first column of Additions you will note in this section there are two lines for each period, one of them has the letter "S" and the other the letter "T"; those on the line with the letter "S" are additions and retirements to the South Texas Gas Company, and those indicated by the letter "T" are the additions and retirements to the Texas Border Gas Company. In the first column I have shown the additions to the fixed capital account, as per the books of the Company, and in the second column the retirements——

Q. New——

A. —or the deductions from the fixed capital account, as per the books of the company.

[fol. 781] Q. Just explain what you mean by the fixed capital account?

A. Fixed capital account is the title of the account shown on the company's books on which are entered the costs of all property additions and items termed, in accounting practice, as capital expenditures or expenditures for the plant or equipment, or organization expenses and items of that nature which are not normally charged to operating expenses.

Q. Capital accounts as distinguished from the operations of the company?

A. Yes.

Q. Now, the next column, headed retirements; what does that represent?

A. That is the retirements of fixed properties, as shown by the books of the company, for the periods indicated, or the reductions in fixed capital.

Q. And the next column, Net Additions; explain that.

A. That is just a net figure; the net figure between additions and retirements for any period.

Q. What is that figure there of $1,042,811.75; what does that represent?

A. That is the accumulated additions down to the last date; in other words, taking the balance at the end or at the beginning of the year, and adding on the net additions for the year, we get the balance for the close of the period.

Q. In the succeeding columns, headed Depreciation as Per Books, in the first of which is the provision for depreciation charged to operations; explain that.

[fol. 782]

A. The items in that column are the charges to operating accounts or depreciation account for the depreciation for that particular period, and they have been charged to operations and set up in a depreciation reserve. The figures shown in that column is provision for depreciation charged to operations, are the actual provisions made on the company books, except that I have adjusted those figures for the Roma-Jennings property that I eliminated from the fixed capital side.

Q. Then proceeding under the next heading, less charges to reserve, what does that represent?

A. That represents charges against this reserve for losses the company has in retirements.

Q. The column headed accumulated depreciation per company books; what does that represent?

A. That represents the balance of the reserve after deducting from the accumulated reserve the charges for retirements, but in this case deducting an additional amount for retirement expense charged to operating accounts.

Q. And that item is the depreciation accumulated as it appeared on the company's books for that period?

A. At the end of the period shown.

Q. And the two succeeding columns, adjusted depreciation; are those computations that you have made?

A. Yes.

Mr. Coates: Now just a moment; if the Court please, we [fol. 783] object to the question and answer sought to be elicited from the witness, and likewise to the two right-hand

columns on page 2 of Plaintiff's Exhibit 4, in so far as they are offered to show or tending to show a proper amount of reserve accrual for this company's property, because it appears from this exhibit that the capital additions to the company's property were added from year to year, and the accumulations in the reserve at this computation of three percent, furnish no adequate criterion of the accumulations in the reserve which should be there, and which are necessary to be there in order to preserve the integrity of the property as of this particular date.

The Court: Let me see if I understand where I am. Now these last two columns that have been referred to, Mr. Witness, are they calculations of yours, or are they figures shown on the books of the company?

A. The last two columns indicate what the accumulated reserve would be——

The Court: I am not talking about that, but are they figures that you have taken from their books, or are they calculations of yours?

A. They are calculations made by me.

The Court: From figures taken from the books?

A. From figures taken from the books.

The Court: And what do you intend to show—let me understand that.

A. We have set up the provision for depreciation as [fol. 784] shown by the company's books, less the charges shown by the company books, and have arrived at the accumulated depreciation per the books. Then, at the actual rates used by the company—it is not at any particular rate per annum, but is the actual book figures. Then we have set up what the provision would have been in these last two columns, had the depreciation been set up at an annual rate of three per cent.

The Court: Mr. Coates, do you understand that?

Mr. Coates: Yes.

The Court: And you object to what it would show, figured at three per cent?

Mr. Coates: in so far as it is offered to show what the proper credit reserve should be, or balance, as at the date March—or October 21, 1932, I believe it is.

The Court: I am not sure that I understand your objection, but I overrule it on the theory that this witness says this is simply a calculation of his, for the purpose of show-

ing what the depreciation would be or would have been at three per cent. I admit it for the purpose of showing his calculation.

Mr. Coates: Note our exception. And may it be understood between counsel, that where we make an objection to a particular line of testimony, that that objection goes to that line of testimony relating to that particular thing, without repeating that objection?

The Court: You may so far as I am concerned, provided it is strictly along that line.

[fol. 785] Mr. Coates: And if there is any doubt about it, we will repeat it.

The Court: If there is any doubt about it, you had better repeat it.

Q. And you stated the items reflected under those two columns are adjustments by you, computing it at a rate of depreciation for the accumulation set up, of three per cent—if such a rate of three per cent had been applied?

The Court: I did not understand they were adjustments, but were calculations.

Q. That is correct.

Mr. Coates: Are they calculations or adjustments?

A. They are calculations, designed to show what the provision for reserve would be had the rate of three per cent been used.

Q. Referring further to page 2, the bottom of the page, Total Book Cost of Properties Transferred to United Gas Public Service Company". Where is that total reflected?

A. The total book cost of properties transferred to United Gas Public Service Company is $1,049,735.38 at October 21, 1932.

Q. $1,049,735.38; and referring further as to the depreciation as per the books, what does the figure of $758,061.64 reflect?

A. The figure of $758,061.64 represents the total provision for reserve set up on the company's books for the periods indicated, eliminating the reserve applicable to those lines from Roma to Jennings.

Q. And the column, accumulated depreciation as per the [fol. 786] company books, of $499,707.47?

A. That is the balance of the depreciation reserve per the company books after charging against that reserve the re-

tirement expenses and losses as per the company books, with of course the same qualification as to the Jennings-Roma lines.

Q. In other words, the Jennings-Roma lines are eliminated from that?

A. They are on this statement, yes.

Q. And on the next succeeding column, under Adjusted depreciation if depreciation is at three per cent; that is the depreciation you have calculated if three per cent had been applied?

Mr. Coates: The same objection.

Q. Making a total of $384,913.30?

A. That is the total provision for depreciation during the periods shown, at the rate of three per cent.

Q. If that rate had been applied?

A. Had that rate been used, yes.

Q. Now, Mr. Lewis, referring back to the item on that page of the total book cost of the properties transferred to the United Gas Public Service Company, please state what the records of the company show with reference to the amount set up at the time that property was transferred?

The Court: From whom to whom?

Q. From South Texas Gas Company and Texas Border Gas Company to United Gas Public Service Company.

A. You mean the amount at which these properties were [fol. 787] set up on the books of the United Gas Public Service Company, when they were transferred?

Q. Yes.

Mr. Coates: And as of what date?

A. These properties, shown on the exhibit, and also the Roma-Jennings Lines, were transferred to the United Gas Public Service Company on October 21, 1932, and the journal entry setting up those properties places them on the United Gas Public Service Company's books at $934,798.02, with a reserve for depreciation of $78,632.20.

Q. And what is the date of that entry?

A. October 21, 1932.

Q. And that, as I understand it, includes not only the properties that you had set up in this exhibit, but also includes the Roma-Jennings line?

A. The explanation of that journal voucher is, "to record acquisition of properties, assets and assumption of liabilities of South Texas Gas Company under agreement dated October 21, 1932". I might add that the Texas Border properties were first transferred to the South Texas Gas Company and then the total transferred to the United Gas Public Service Company, and this is the journal voucher or a transcript of the journal voucher setting up the transfer.

The Court: And the question was, does that include the Jennings-Roma line as well?

A. It purports to include all the properties, including that line.

[fol. 788] Q. Now then, did you find anything in the books and records of the company, the amount they set up for the Roma-Jennings line; the cost of that line?

A. You mean the cost when it was built—the cost to the South Texas Gas Company?

Q. Yes.

A. Yes, I think I can give you that—no, I cannot give you that figure, except including a telephone line that was built.

Q. This transfer of properties, according to that journal entry, included all the properties of the company, didn't it?

A. It purports to, from the explanation on the journal voucher.

Q. And your figures include the telephone line, as well as the Roma line?

A. I do not have the Roma line here, but I can give you the * * * The items of additions definitely identified as pertaining to that Jennings-Roma line, total cost to South Texas Gas Company per their books, was $963,942.73.

Q. Of the Roma line alone?

A. Yes, that is the Jennings-Roma line. No—that includes some gathering lines. That is the amount I have eliminated in preparing this statement for the Monterrey line, which includes gathering lines, the telephone line, and some meter and regulator stations. The Roma line was set up—the first item charged on the books to the Roma-Jennings line was in one journal voucher in 1929, setting up the cost of the line, which includes, I think, the telephone line, at $848,232.98.

[fol. 789] Q. Where does that entry appear in the company books?

A. That is the entry on the South Texas Gas Company books in December, 1929, setting up the cost of the Roma-Jennings line.

Q. And in making these computations, you have eliminated the Roma-Jennings line entirely?

A. Yes.

Q. And the journal entry you just spoke of, when the properties were transferred from the South Texas and the Texas Border to United Gas Public Service Company, contemplated the entire properties?

A. Yes.

Q. Including the Roma lines?

A. Yes.

Q. And that entry was—if you will give it to us again, please, the total entry, including all the properties?

A. The total amount charged to fixed capital account on the United Gas Public Service Company's books, in transferring these properties, is $934,798.02, and a depreciation reserve of $78,632.20.

Mr. Coates: Will you identify that entry, Mr. Lewis?

A. That is J-10-156 of the United Gas Public Service Company books.

Q. Mr. Lewis, turning to page 1 of the exhibit, Historical Cost Per Books, the first item appearing there of $1,049,735.38; where is that carried forward from?

A. From the fourth column from the left of page 2, cumulative additions transferred to United Gas Public Serv- [fol. 790] ice Company on October 21, 1932.

Q. And that figure is exclusive of the Roma line?

A. Yes.

Q. Now, about the middle of the page, historical cost of properties, December 31, 1933, on page 1 of the Exhibit, the sum of $1,151,993.65; what does that reflect?

A. That represents the historical cost of these properties that were transferred to United Gas Public Service Company on October 21, 1932, plus the net additions that the United Gas Public Service Company had made to those properties at December 31, 1933.

Q. Now, the next column, Retirement Reserves; just explain that to the Court and the jury.

A. The item of accrued book reserves on properties transferred, of $499,707.47, represents the accumulated or the net depreciation after charging retirements, from 1910, through

October 21, 1932—the depreciation accumulated on the properties that were transferred to the United Gas Public Service Co.

Mr. Coates: Do you mean the net credit balance in the depreciation reserve was set up on the books?

A. Well, it is hard to say it exactly, because there have been a number of mergers, and each time this was wiped out and they started over; but this represents the total cumulative reserve in all the properties.

Mr. Coates: You said the total depreciation reserve on the properties, and I wondered if you meant that.

[fol. 791] A. Perhaps I had better start over, then. I will put it this way—the $499,707.47 represents the net accumulations of depreciation reserves set up on these properties from 1910 to October 21, 1932, per the company's books.

Q. Now, the next main heading, Retirement Reserves, adjusted to three percent; explain that calculation.

The Court: Do you mean Adjusted, or Calculated?

Mr. Lange: It is calculated, and not adjusted.

The Court: I understand calculated and adjusted mean two different things, and I might be wrong about that but I want to be right on these things.

Mr. Lange: It is a calculation.

A. That section indicates that the depreciation reserve would be on these properties, had a rate of three percent been used—that is, an annual rate of three percent been used for providing depreciation reserves.

Q. And the total reflected at the bottom of that page, of $135,349.81; what is that?

A. That is the balance that would be in the depreciation reserve had depreciation been computed at three percent per annum.

Q. Now, Mr. Lewis, referring back to page 2 of the exhibit——

The Court: Let me ask a question right here: Your last column at the bottom of the page here, of $126,559.13——

A. That is carried forward from page 2.

The Court: I am looking at page 2 now; see here, I have my finger right on it—as a matter of book keeping, why [fol. 792] shouldn't that be the difference between the next two columns to the left?

A. No, because the second column to the left is the actual depreciation per the company books, and these last two columns are entirely independent of the book depreciation but use as a basis the cost of the assets and use a rate of three percent to compute depreciation.

Mr. Coates: Now, Mr. Lange, I don't want to break in, but are you using the term depreciation and accumulated depreciation in each case in your testimony to designate balances in the depreciation reserve account?

A. When I have referred to accumulated depreciation, that is what I mean, yes.

Mr. Coates: That is the book entries?

A. Yes. Now, this figure of $126,000.00, accumulated depreciation at October 21, 1932, is the balance that would have been in the depreciation reserve account, had depreciation been computed at three percent per annum on the cost of the properties.

Mr. Coates: Now, I want to make an objection right there——

The Court: The witness hasn't finished his statement.

A. That $126,000.00 figure is the $384,000.00 in the second column to the left, which was the total provision, less the figure of $206,496.46, which amounts have actually been charged to the reserves of the company on the company books, and the item of $51,857.71.

[fols. 793-795] The Court: Now, let's see if I got that: The figure $206,000.00 in the fifth column to the left, plus the $51,000.00 in the fourth column to the left, added together and subtracted from the $384,000.00, would give you the $126,000.00?

A. That's right, and——

Mr. Coates: Now, at this time, the Defendant;——

The Court: Wait just a bit; I think the witness wants to make a further explanation there.

A. The book figure or the accumulated depreciation as per the company books, $758,000.00 which was actually set up on the books under the provision for depreciation charged to operations, less the $206,000.00 and the $51,000.00——

* * * * * * *

[fol. 796] Q. Mr. Lewis, in connection with your auditing work for the City of Laredo in this case, I will ask you whether you prepared another operating exhibit?

A. Yes.

Q. What does that exhibit reflect?

A. It is a statement of earnings of the Border Gas Company from January 1, 1911 to December 31, 1924, and a statement of earnings of the Border Gas, Texas Border, and South Texas for the year 1928; and statement of the earnings of the Texas Border Gas Company and South Texas Gas Company for the years 1929, 1930, and 1931.

Mr. Coates: To which defendant objects for the reason that these operating statements serve no useful purpose, and are immaterial and irrelevant to any issue in this case, and can only be an attempt to use earnings, or lack of earnings, in prior periods not closely related in time, nor remotely connected in time, with the date of this inquiry, and the date of the Commission's order, and relate to operating results at and during periods of a different economic era, which economic era shows and furnishes no criterion of the requirements of this company at this time.

[fol. 797] The Court: As in the other instance, I overrule the objection now and admit it.

Mr. Lange: We desire to introduce this exhibit in evidence.

Mr. Coates: We desire to make a part of our objection here each and all of the reasons we set forth in our objection to the Commission's Order dated June 13, 1933.

(Thereupon the plaintiff introduced in evidence the exhibit above referred to, and same was marked as Plaintiff's Exhibit No. 5, and a copy thereof is attached hereto and made a part of this Statement of Facts, and appears in Volume of Exhibits III, page 1774.)

* * * * * * *

[fol. 798] Thursday, March 15, 1934

Evening Session: 7 P. M.

Mr. Lange: If the Court please, we have the witness Kinney here and we will put him on now.

The Court: All right.